

proportionality review, Justice Breyer found the provision in question unconstitutional because it “lack[ed] any . . . limiting features.”<sup>19</sup> Justice Breyer did, however, state that the provision could be constitutional if it were “more finely tailored,” such as having the level of prestige of the medal that a defendant claims to own correspond with the level of punishment they would receive for their lie.<sup>20</sup> Overall, Justice Breyer would apply less, albeit some, First Amendment protection to false speech than would Justice Kennedy—it remains unclear which approach today’s Court would take. At the very least, *Alvarez* demonstrates that the Court would likely strike down a content-based restriction on false speech on First Amendment grounds if the restriction were not the least restrictive means of preventing some specific harm.<sup>21</sup>

The First Amendment certainly does not protect all false speech, though. It is a finable offense, for instance, to willfully provide false answers to questions for the U.S. Census.<sup>22</sup> Moreover, perjury before a grand jury or court is a felony offense under federal law,<sup>23</sup> which the Court has described as having “unquestioned constitutionality.”<sup>24</sup> Perhaps most notably, the Court has clearly established “that false and deceptive advertisements are unprotected by the First Amendment,”<sup>25</sup> a principle that is discussed in detail in the next section. Why does false speech in these examples lack First Amendment protection? While not absolutely clear, the plurality opinion and concurrence in *Alvarez* provide some guidance. According to Justice Kennedy, there is a distinction between restrictions targeting “legally cognizable harm[s]” and restrictions targeting “falsity and nothing more,” with constitutional restrictions on false speech falling in the former category.<sup>26</sup> Similarly, Justice Breyer finds that restrictions on false speech can be constitutional when they “limit[] the prohibited lies to those that are particularly likely to produce harm.”<sup>27</sup>

To summarize, whether false speech is protected under the First Amendment greatly depends on context, and the Court’s approach is not always consistent. The restriction, however, must likely be narrowly tailored and target some specific harm to pass constitutional muster.

### *Political Speech vs. Commercial Speech*

False political speech generally seems to enjoy greater First Amendment protection than false commercial speech. The Court has identified political speech as being at “the essence of First Amendment expression”—comparable to how the Court described speech on public issues in *New York Times v. Sullivan*<sup>28</sup>—therefore entitling such speech to “great[] constitutional protection.”<sup>29</sup>

<sup>19</sup> *Id.* at 736.

<sup>20</sup> *See id.* at 737–38.

<sup>21</sup> As Justice Kennedy states, “[F]alsity alone may not suffice to bring . . . speech outside the First Amendment.” *Id.* at 719 (plurality opinion).

<sup>22</sup> *See* 13 U.S.C. § 221(b) (2018).

<sup>23</sup> *See* 18 U.S.C. § 1623(a) (2018) (stating that anyone who commits perjury under oath “shall be fined . . . or imprisoned not more than five years, or both”).

<sup>24</sup> *United States v. Grayson*, 438 U.S. 41, 54 (1978).

<sup>25</sup> *Chemerinsky*, *supra* note 1, at 9; *see also* *Cent. Hudson Gas & Elec. Corp. v. Pub. Serv. Comm’n*, 447 U.S. 557, 563 (1980).

<sup>26</sup> *See Alvarez*, 567 U.S. at 719 (plurality opinion).

<sup>27</sup> *See id.* at 734 (Breyer, J., concurring in the judgment).

<sup>28</sup> *See supra* notes 4–8 and accompanying text.

<sup>29</sup> *McIntyre v. Ohio Elections Comm’n*, 514 U.S. 334, 347 (1995).

Even when laws specifically target false political speech, courts seem reluctant to find such laws constitutional under the First Amendment.

The case of *Susan B. Anthony List v. Driehaus* provides a recent example of this, in which the Sixth Circuit struck down an Ohioan law that prohibited persons from disseminating false information about a political candidate “knowing the same to be false or with reckless disregard of whether it was false or not.”<sup>30</sup> The case first made its way up to the Supreme Court in 2014, during which the Court remanded the case back to the Sixth Circuit over standing issues without deciding any issue on the merits.<sup>31</sup> Nevertheless, writing for a unanimous Court, Justice Thomas did state that “[t]he burdens that [the law] can impose on electoral speech are of particular concern here.”<sup>32</sup> This suggests that the Court is at least wary of restrictions on false political speech.

On remand, the Sixth Circuit expressed similar concerns. First, the court determined that strict scrutiny was the appropriate standard of review to apply to the Ohioan law.<sup>33</sup> While the court acknowledged that false speech receives only “some constitutional protection,” the court took issue with the fact that the law applied to “all false speech regarding a political candidate, even that which may not be material, negative, defamatory, or libelous.”<sup>34</sup> Thus, because of the law’s broad scope, strict scrutiny applied. Next, the court found compelling Ohio’s interests in preserving election integrity, protecting voters from confusion and undue influence, and ensuring that fraud does not undermine the right to vote.<sup>35</sup> The court, however, did not find the law to be narrowly tailored, citing six reasons: (1) criminal proceedings were not guaranteed to conclude before relevant elections; (2) the hearing process failed to screen out frivolous complaints; (3) the law applied to all false statements, including non-material ones (e.g., lying about a candidate’s shoe size); (4) the law applied to advertisers; (5) the law’s overinclusivity could damage campaigns and therefore election integrity; and (6) the law too closely resembled another law struck down by the Supreme Court in *McIntyre*.<sup>36</sup> Overall, *Susan B. Anthony List* demonstrates how the First Amendment would likely provide protection against future restrictions on false political speech, despite many compelling interests, unless such a restriction were extraordinarily narrowly tailored.

Compare this with false commercial speech, which enjoys far less protection under the First Amendment. The most authoritative case on commercial speech is *Central Hudson*, in which an electric company sued the Public Service Commission of New York for requiring electric

<sup>30</sup> 814 F.3d 466, 469–70, 476 (6th Cir. 2016) (internal quotation marks omitted). This law only applied “if the statement [was] designed to promote the election, nomination, or defeat of the candidate.” *Id.*

<sup>31</sup> See *Susan B. Anthony List v. Driehaus*, 573 U.S. 149, 168 (2014).

<sup>32</sup> *Id.* at 165. Professor Chemerinsky responded to this opinion by stating that “[i]t is hard to imagine the Supreme Court upholding a state law like Ohio’s that prohibits false statements in election campaigns.” Chemerinsky, *supra* note 1, at 8.

<sup>33</sup> See *Susan B. Anthony List*, 814 F.3d at 472–73.

<sup>34</sup> *Id.*

<sup>35</sup> See *id.* at 473–74.

<sup>36</sup> See *id.* at 474–76. In *McIntyre*, the Court struck down Ohio’s election law prohibiting anonymous leafleting “because its prohibitions included non-material statements that were ‘not even arguably false or misleading,’ made by candidates, campaign supporters, and ‘individuals acting independently and using only their own modest resources,’ whether made ‘on the eve of an election, when the opportunity for reply is limited,’ or months in advance.” *Id.* at 476 (quoting *McIntyre v. Ohio Elections Comm’n*, 514 U.S. 334, 351–52 (1995)).

companies to ban any language in their marketing that promoted the use of electricity.<sup>37</sup> While the Court ultimately struck down the Commission's broad prohibition,<sup>38</sup> the Court did so by utilizing what is now known as the "*Central Hudson* test"—a test that essentially precludes false commercial speech from First Amendment protection. The *Central Hudson* test begins with a threshold question: Is the regulated commercial speech "misleading" or concerning unlawful activity? If the answer is yes to either, then the First Amendment offers no protection to the commercial speech in question, and the case is settled.<sup>39</sup> Consequently, false commercial speech is not a protected form of speech under the U.S. Constitution. In the Court's words, "there can be no constitutional objection to the suppression of commercial messages that do not accurately inform the public."<sup>40</sup>

Overall, the First Amendment affords strong protection to false political speech, but little protection to false commercial speech. As the next section discusses, though, what constitutes false commercial speech is subject to some debate.

#### *Level of Falsehood Required Under Central Hudson*

For commercial speech to qualify as "false"—and thus lose its First Amendment protection—its falsity must be fairly clear and likely to mislead others. As one expert puts it, "To be characterized as literally false, a statement must be unambiguous. An advertising claim [that is] reasonably susceptible to multiple interpretations [will not] meet that high standard."<sup>41</sup> The case law largely reflects this assertion.

For instance, the Ninth Circuit recently maintained in a false advertising lawsuit brought under Section 43(a) of the Lanham Act<sup>42</sup> that "[s]tatements of opinion and puffery . . . are not actionable."<sup>43</sup> Likewise, in partially dismissing a Section 43(a) action against Blue Cross/Blue Shield for advertisements that said "Better than HMO. So good, it's Blue Cross and Blue Shield," the Third Circuit stated that "[t]his strikes us as the most innocuous kind of 'puffing,' common to advertising and presenting *no danger of misleading the consuming public*."<sup>44</sup> Finally, in the 2010

<sup>37</sup> See *Cent. Hudson Gas & Elec. Corp. v. Pub. Serv. Comm'n*, 447 U.S. 557, 558–59 (1980). The Commission passed this rule during the 1973 oil crisis. See *id.*

<sup>38</sup> *Id.* at 572.

<sup>39</sup> If the commercial speech in question is not misleading and concerns lawful activity, then courts apply a three-pronged test: (1) Does the government have a substantial interest? (2) Does the regulation directly and materially advance such interest? (3) Is the regulation narrowly tailored? If the answer to all three questions is yes, then the regulation is constitutional. Thus, the *Central Hudson* test subjects truthful, lawful commercial speech to a form of intermediate scrutiny. See *id.* at 564–66; see also David L. Hudson, Jr., *Central Hudson Test*, FIRST AMENDMENT ENCYCLOPEDIA (2017), <https://www.mtsu.edu/first-amendment/article/1536/central-hudson-test>.

<sup>40</sup> *Cent. Hudson*, 447 U.S. at 563.

<sup>41</sup> Alexandra J. Roberts, *False Influencing*, 109 GEO. L.J. 81, 108 (2020).

<sup>42</sup> Section 43(a) of the Lanham Act makes false advertising an actionable offense. Specifically, Section 43(a) makes it an actionable offense for persons to engage in commercial speech that (1) "is likely to cause confusion, or to cause mistake, or to deceive as to the affiliation, connection, or association of such person with another person, or as to the origin, sponsorship, or approval of his or her goods, services, or commercial activities by another person," or (2) "misrepresents the nature, characteristics, qualities, or geographic origin of his or her or another person's goods, services, or commercial activities." 15 U.S.C. § 1125 (2018).

<sup>43</sup> *Ariix, LLC v. Nutriscience Corp.*, 985 F.3d 1107, 1121 (9th Cir. 2021).

<sup>44</sup> *U.S. Healthcare v. Blue Cross of Greater Phila.*, 898 F.2d 914, 926 (3d Cir. 1990) (emphasis added).

case of *Alexander v. Cahill*, the Second Circuit held that a New York rule prohibiting the use of “a nickname, moniker, motto or trade name that implies an ability to obtain results in a matter” in attorney advertisements did not survive the *Central Hudson* test, and therefore violated the First Amendment.<sup>45</sup> In striking down the rule, the court explained that “[t]here is a dearth of evidence . . . supporting the need for [a] prohibition on names that imply an ability to get results when the names are akin to, and no more than, the kind of puffery that is commonly seen, *and indeed expected*, in commercial advertisements generally.”<sup>46</sup> The court noted in particular that there was no evidence of consumers having been in fact misled by “the sorts of names and promotional devices” targeted by the rule,<sup>47</sup> thus highlighting how consumer expectations and reactions can play a role in First Amendment analyses of prohibitions on false commercial speech.

Compare the above cases to the Eleventh Circuit fraud case of *United States v. Sarcona*, in which the defendant’s First Amendment “puffery” defense failed.<sup>48</sup> In *Sarcona*, a jury charged the defendant, the founder of a weight-loss company, with fraud for engaging in deceptive practices.<sup>49</sup> Such practices included advertising scientifically unsupported claims about achieving dramatic weight loss within brief periods of time without dieting or exercise, as well as false representations of medical endorsements.<sup>50</sup> On appeal, the defendant raised a First Amendment defense, claiming that his exaggerations in his advertisements were “mere puffery” and that he had “a First Amendment right to advertise his product aggressively.”<sup>51</sup> The Eleventh Circuit rejected this defense, finding that there was sufficient evidence that the defendant “*intentionally* presented *materially* false and misleading information” about his company and its product’s weight-loss benefits.<sup>52</sup> According to the court, the defendant’s advertising “went far beyond mere puffery” and crossed the line “into the realm of fraud and deception,” thus precluding him from claiming protection under the First Amendment.<sup>53</sup>

In short, commercial speech does not qualify as false or misleading for *Central Hudson*/First Amendment purposes if it is puffery or opinion, or if it could be subject to multiple interpretations by the consumer. Instead, to lose its First Amendment protection, such speech must relay an unequivocal message containing materially false information that presents an actual danger of misleading consumers.

<sup>45</sup> 598 F.3d 79, 94–95 (2d Cir. 2010).

<sup>46</sup> *Id.* at 95 (emphasis added).

<sup>47</sup> *See id.*

<sup>48</sup> 457 F. App’x 806, 816 (11th Cir. 2012).

<sup>49</sup> *Id.* at 808.

<sup>50</sup> *Id.*

<sup>51</sup> *Id.* at 814–15.

<sup>52</sup> *Id.* at 815 (emphases added).

<sup>53</sup> *Id.*

### FECA Preemption of State Regulation of Federal Scam PACs

The question of whether FECA preempts the enforcement of state law against federal scam PACs has gone unanswered by the Supreme Court.<sup>54</sup> Nevertheless, federal circuit and district court opinions on FECA and preemption offer some guidance on the extent to which FECA may preempt such enforcement of state law. Express preemption likely provides the greatest hurdle, though courts have read FECA's preemption clause narrowly. Meanwhile, neither field nor obstacle preemption seem too applicable, provided that states are enforcing laws of general applicability against federal scam PACs.

#### *Express Preemption*

FECA contains an express preemption clause, though courts have construed the clause quite narrowly. Specifically, Section 30143 of FECA states that “the provisions of this Act, and of rules prescribed under this Act, supersede and preempt any provision of State law with respect to election to Federal office.”<sup>55</sup> The FEC has clarified the scope of this preemption, promulgating a rule which states that “Federal law supersedes State law concerning the (1) Organization and registration of political committees supporting Federal candidates; (2) Disclosure of receipts and expenditures by Federal candidates and political committees; and (3) Limitation on contributions and expenditures regarding Federal candidates and political committees.”<sup>56</sup> In turn, courts have given Section 30143 “a narrow preemptive effect,” often citing a “strong presumption” against preemption.<sup>57</sup> For instance, courts have held that FECA's preemption clause does not supersede state causes of action against waste of corporate assets,<sup>58</sup> state-law liability for debts of federal campaign committees,<sup>59</sup> or fraudulent-transfer suits brought under state law to recover money donated by fraudsters to federal party committees.<sup>60</sup> Consequently, while some have argued for a

<sup>54</sup> See *Dewald v. Wriggelsworth*, 748 F.3d 295, 301 (6th Cir. 2014) (finding that the conviction of a defendant for fraud and larceny for running federal scam PACs did not violate clearly established law under AEDPA because “no Supreme Court case has held that the FECA preempts state-law fraud claims”).

<sup>55</sup> 52 U.S.C. § 30143(a) (2018). The only explicit exception to this preemption clause pertains to the construction of office buildings for state and local party committees. See *id.* § 30143(b).

<sup>56</sup> 11 C.F.R. § 108.7(b) (2021). The FEC also clarified what FECA does *not* preempt:

The Act does not supersede State laws which provide for the (1) Manner of qualifying as a candidate or political party organization; (2) Dates and places of elections; (3) Voter registration; (4) Prohibition of false registration, voting fraud, theft of ballots, and similar offenses; (5) Candidate's personal financial disclosure; or (6) Application of State law to the funds used for the purchase or construction of a State or local party office building.

*Id.* § 108.7(c).

<sup>57</sup> *Janvey v. Democratic Senatorial Campaign Comm.*, 712 F.3d 185, 200–01 (5th Cir. 2013) (quoting *Karl Rove & Co. v. Thornburgh*, 39 F.3d 1273, 1280 (5th Cir. 1994)); see also *Stern v. Gen. Elec. Co.*, 924 F.2d 472, 475 & n.3 (2d Cir. 1991) (“The narrow wording of [Section 30143] suggests that Congress did not intend to preempt state regulation with respect to non-election-related activities.”); *Reeder v. Kansas City Bd. of Police Comm'rs*, 733 F.2d 543, 545–46 (8th Cir. 1984) (holding that Section 30143 did not preempt a state law forbidding police officers from making political contributions to federal campaigns); Sam Levor, Note, *The Failures of Federal Campaign Finance Preemption*, 20 N.Y.U. J. LEGIS. & PUB. POL'Y 523, 531–33 (2017) (“Unlike the FEC, the courts seem more willing to narrow FECA's preemptive scope.”).

<sup>58</sup> *Stern*, 924 F.2d at 475.

<sup>59</sup> *Karl Rove*, 39 F.3d at 1279–80.

<sup>60</sup> *Janvey*, 712 F.3d at 189, 200–01.

broad reading of Section 30143,<sup>61</sup> courts regularly seem to find that FECA's preemption clause does not preempt state laws that "[have] nothing to do with federal elections (or any elections, for that matter)" and instead are of general applicability.<sup>62</sup>

Based on this case law, state regulators are likely not expressly preempted under FECA from cracking down on federal scam PACs through general state laws, e.g., pursuing some form of fraud or larceny charges against the owners of federal scam PACs. What state regulators probably *cannot* do is institute and apply laws that specifically target federal scam PACs and their operators for misrepresenting themselves as working for a candidate or political party, because Section 30124 of FECA explicitly prohibits individuals from "fraudulently misrepresent[ing] [themselves] as speaking, writing, or otherwise acting for or on behalf of any candidate or political party or employee or agent thereof for the purpose of soliciting contributions or donations."<sup>63</sup> Thus, comparable state laws would surely be preempted under a combination of Sections 30124 and 30143. This might not, however, preclude states from going after federal scam PACs for other forms of fraud. As the Western District of Texas recently noted in a mail and wire fraud case brought against the owner of various scam PACs (though brought by the federal government rather than a state government), "[Section 30124] does not govern 'fraudulent misrepresentations and solicitations of funds' generally; it governs fraudulent misrepresentation of *campaign authority*."<sup>64</sup>

Overall, while FECA's preemption clause may create some barriers for state regulators looking to confront federal scam PACs, state regulators would likely avoid preemption if the laws they apply are general rather than specifically intended to target federal scam PACs.

#### *Field and Conflict Preemption*

While FECA certainly occupies the field of federal campaign finance law, it seems unlikely that such field preemption extends to the application of general state laws to federal scam PACs. As the Supreme Court states, field preemption exists when federal regulation of a field is "so pervasive as to make reasonable the inference that Congress left no room for the States to supplement it."<sup>65</sup> FECA, being so comprehensive in its regulation of federal campaign finance, would appear to satisfy this standard. Courts have, nevertheless, limited the scope of FECA's field preemption, despite recognizing it.

For instance, the Fifth Circuit has defined FECA's primary purpose as "regulat[ing] campaign contributions and expenditures in order to eliminate pernicious influence . . . over candidates by those who contribute large sums," and therefore concluded that Congress had no intention to "occupy the field" with regards to Texas's fraudulent-transfer laws.<sup>66</sup> Courts largely seem "unwilling to create . . . regulatory vacuum[s] without a clear indication of congressional

<sup>61</sup> See, e.g., *Dewald v. Wriggelsworth*, 748 F.3d 295, 307–10 (6th Cir. 2014) (Cole, J., dissenting).

<sup>62</sup> *Levor*, *supra* note 57, at 532.

<sup>63</sup> 52 U.S.C. § 30124(b)(1) (2018).

<sup>64</sup> *United States v. Prall*, No. 1:19-CR-13-RP, 2019 WL 1643742, at \*2 (W.D. Tex. Apr. 16, 2019) (emphasis added).

<sup>65</sup> *English v. Gen. Elec. Co.*, 496 U.S. 72, 79 (1990).

<sup>66</sup> *Janvey v. Democratic Senatorial Campaign Comm.*, 712 F.3d 185, 202 (5th Cir. 2013) (quoting *Karl Rove & Co. v. Thornburgh*, 39 F.3d 1273, 1281 (5th Cir. 1994)).

intent,”<sup>67</sup> because exempting federal candidate, political, and party committees from state regulation under a theory of FECA field preemption would often, in the Fifth Circuit’s words, “lead to absurd results.”<sup>68</sup> Even the FEC recognizes that federal committees are still subject to state contract law,<sup>69</sup> which is noteworthy given how infrequently the FEC finds that FECA does not preempt state law.<sup>70</sup> Accordingly, while FECA may field preempt state laws that specifically regulate federal campaign finance, it likely does not preempt general state laws that incidentally happen to cover federal scam PACs.

Furthermore, conflict preemption seems inapplicable to the relationship between FECA and state regulation of federal scam PACs. For one, it is difficult to imagine a situation in which a federal scam PAC could not simultaneously comply with a state law being enforced against it by state regulators and any provision of FECA.<sup>71</sup> If anything, cracking down on federal scam PACs would complement some of FECA’s provisions.<sup>72</sup> Second, a state law being enforced against federal scam PACs would probably not “stand[] as an obstacle to the accomplishment and execution of the full purposes and objectives of [FECA].”<sup>73</sup> As noted earlier, courts have recognize FECA’s primary purpose as being to eliminate improper influence over federal candidates.<sup>74</sup> Moreover, Section 30124 demonstrates that Congress intended for FECA to play at least some role in combatting the fraudulent solicitation of contributions and donations in federal elections.<sup>75</sup> Therefore, state regulators pushing back against federal scam PACs seem to not present much of an obstacle in the enforcement of FECA.

<sup>67</sup> *Stern v. Gen. Elec. Co.*, 924 F.2d 472, 475 n.4 (2d Cir. 1991).

<sup>68</sup> *Janvey*, 712 F.3d at 202.

<sup>69</sup> See FEC Advisory Opinion 1989-02, at 2 (Apr. 25, 1990) (“The Commission has long held that State law governs whether an alleged debt in fact exists, what the amount of a debt is, and which persons or entities are responsible for paying a debt.”).

<sup>70</sup> See *Levor*, *supra* note 57, at 530.

<sup>71</sup> See *Gade v. Nat’l Solid Wastes Mgmt. Ass’n*, 505 U.S. 88, 98 (1992) (describing conflict preemption as when “compliance with both federal and state regulations is a physical impossibility”).

<sup>72</sup> See, e.g., 52 U.S.C. § 30124(b)(1) (2018).

<sup>73</sup> *Freightliner Corp. v. Myrick*, 514 U.S. 280, 287 (1995) (quoting *Hines v. Davidowitz*, 312 U.S. 52, 67 (1941)).

<sup>74</sup> See *supra* note 66 and accompanying text.

<sup>75</sup> See *supra* note 63 and accompanying text.

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Moot Court Experience	No

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March 7, 2022

The Honorable Judge Lewis J. Liman  
Daniel Patrick Moynihan  
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Dear Judge Liman,

I am writing to apply for a clerkship with your chambers starting in 2024 or any subsequent term. I graduated from New York University School of Law in 2020 and currently work as an associate at Hogan Lovells New York in the Litigation, Arbitration, and Employment Department. I have greatly enjoyed my time in New York and am eager to continue my career here long-term. I plan to pursue a career as an Assistant U.S. Attorney; as such, I would be honored to learn from your experience both as a judge and as a former A.U.S.A.

I am confident that I would make a strong addition to your chambers in the Southern District of New York. I was the Editor in Chief of the *N.Y.U. Journal of International Law & Politics* and a 2020 Salzburg Cutler Fellow. I learned to discuss and defend my research and conclusions as a panelist at the Ninth Annual Cambridge International Law Conference and as a presenter at the N.Y.U. Labor Center 2020 Student Scholarship Program. As a research assistant for Professor Erin Murphy while she worked to revise the Model Penal Code for sexual assault, I also gained insight into the formulation and adoption of law.

Enclosed please find my resume, transcript, and writing sample. My writing sample is an excerpt from a law review essay published last year. The excerpt is from my original submission, and so unedited by the law review. Letters of recommendation will arrive separately from the following:

Professor Erin Murphy, N.Y.U. School of Law, (212) 998-6672

Professor Samuel Estreicher, N.Y.U. School of Law, (212) 998-6226

Oren Gleich, U.S. Attorney's Office for the Eastern District of New York, (631) 715-7889

Please let me know if I can provide any additional information. I can be reached by phone at (302) 753-9628, or by email at hmcadams429@gmail.com. Thank you for your consideration.

Respectfully,

/s/

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**EXPERIENCE**

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*Associate*, January 2021–Present; *Summer Associate*, May 2019–August 2019

Analyze probable outcomes of legal issues by researching federal and state law, as well as draft memoranda, client alerts, and submissions for various types of litigation with a focus on employment.

**PROFESSOR ERIN MURPHY, N.Y.U. SCHOOL OF LAW**, New York, NY

*Research Assistant*, May 2020–November 2020

Conducted research and cite-checking for the Professor's project on revising Model Penal Code 213.

**U.S. ATTORNEY'S OFFICE FOR THE EASTERN DISTRICT OF NEW YORK**, Brooklyn, NY

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Conducted research for the Professor's project on examining the evolution of response to sexual assault.

**PUBLICATIONS**

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*Liquidated Damages or Human Trafficking?: How a Recent Eastern District of New York Decision Could Impact the Nationwide Nursing Shortage*, 169 U. PA. L. REV. ONLINE 13 (2020), <https://tinyurl.com/2br4he3p>.

Book Note, 51 N.Y.U.J. INT'L L. & POL. 999, 1021 (2019).

**PRESENTATIONS**

*Indirect Discrimination in Japan: Explaining Japan's Departure from a Basic Standard in Western Anti-Discrimination Law*, N.Y.U. Labor Center for Labor and Employment Law: Student Scholarship in Labor and Employment Law, N.Y.U. School of Law, July 15, 2020 (virtual conference over Zoom).

*The Toxic Impact of Illiberalism on Cooperative International Legal Systems*, Cambridge International Law Conference, University of Cambridge, England, Apr. 30–May 2, 2020 (virtual conference over Zoom).

Name: Heather A McAdams  
 Print Date: 10/08/2020  
 Student ID: N17625853  
 Institution ID: 002785  
 Page: 1 of 1

New York University  
 Beginning of School of Law Record

Current  
 Cumulative

AHRS  
 14.0  
 44.0  
 EHRS  
 14.0  
 44.0

Degrees Awarded

05/20/2020

Spring 2019

Juris Doctor  
 School of Law  
 Major: Law

School of Law  
 Juris Doctor  
 Major: Law

Fall 2017

School of Law  
 Juris Doctor  
 Major: Law  
 Lawyering (Year) LAW-LW 10687 2.5 CR  
 Instructor: Paulina E Davis  
 Torts LAW-LW 11275 4.0 B+  
 Instructor: Eleanor M Fox  
 Procedure LAW-LW 11650 5.0 B  
 Instructor: Troy A McKenzie  
 Contracts LAW-LW 11672 4.0 A  
 Instructor: Clayton P Gillette  
 1L Reading Group LAW-LW 12339 0.0 CR  
 Topic: Human Rights through Film  
 Instructor: Philip G Alston  
 Grainne de Burca

International Criminal Law and Transitional Justice Seminar LAW-LW 10580 2.0 A  
 Instructor: Robert L Howse  
 Comparative Civil Procedure Seminar LAW-LW 10795 2.0 B+  
 Instructor: Oscar G Chase  
 European Union Law LAW-LW 10851 3.0 A  
 Instructor: Grainne de Burca  
 Teaching Assistant LAW-LW 11608 1.0 CR  
 Instructor: Joseph B Heath  
 Property LAW-LW 11783 4.0 B  
 Instructor: Daniel Hulsebosch  
 International Criminal Law and Transitional Justice Seminar: Writing Credit LAW-LW 12095 1.0 A  
 Instructor: Robert L Howse

Current  
 Cumulative

AHRS  
 15.5  
 15.5  
 EHRS  
 15.5  
 15.5

Current  
 Cumulative

AHRS  
 13.0  
 57.0  
 EHRS  
 13.0  
 57.0

Spring 2018

School of Law  
 Juris Doctor  
 Major: Law  
 Lawyering (Year) LAW-LW 10687 2.5 CR  
 Instructor: Paulina E Davis  
 Legislation and the Regulatory State LAW-LW 10925 4.0 B  
 Instructor: Brookes D Billman  
 Criminal Law LAW-LW 11147 4.0 A  
 Instructor: Rachel E Barkow  
 International Law LAW-LW 11577 4.0 A-  
 Instructor: Jose E Alvarez  
 Current 14.5  
 Cumulative 30.0

School of Law  
 Juris Doctor  
 Major: Law

Fall 2019

Law and Society in Japan Seminar LAW-LW 10562 2.0 A-  
 Instructor: Frank K Upham  
 Journal of International Law & Politics LAW-LW 10935 2.0 CR  
 International Human Rights: Law, Policy, Strategy LAW-LW 11329 4.0 A-  
 Instructor: Philip G Alston  
 Evidence LAW-LW 11607 4.0 B  
 Instructor: Erin Murphy  
 Writing About the Law Seminar LAW-LW 12609 2.0 B+  
 Instructor: Ryan Goodman  
 Jesse Howe Wegman

Current  
 Cumulative

AHRS  
 14.0  
 71.0  
 EHRS  
 14.0  
 71.0

Fall 2018

School of Law  
 Juris Doctor  
 Major: Law  
 National Security Law and Policy Seminar LAW-LW 10067 2.0 B+  
 Instructor: Lisa Monaco  
 Prosecution Externship - Eastern District LAW-LW 10103 3.0 CR  
 Instructor: Seth David DuCharme  
 Jacquelyn M Kasulis  
 Professional Responsibility in Criminal Practice Seminar LAW-LW 10200 2.0 A  
 Instructor: Erin Murphy  
 Prosecution Externship - Eastern District Seminar LAW-LW 10355 2.0 A-  
 Instructor: Seth David DuCharme  
 Jacquelyn M Kasulis  
 Criminal Procedure: Fourth and Fifth Amendments LAW-LW 10395 4.0 B+  
 Instructor: Stephen J Schulhofer  
 Teaching Assistant LAW-LW 11608 1.0 CR  
 Instructor: Joseph B Heath

School of Law  
 Juris Doctor  
 Major: Law

Spring 2020

--  
 Due to the COVID-19 pandemic, all spring 2020 NYU School of Law (LAW-LW.) courses were graded on a mandatory CREDIT/FAIL basis.  
 --

Employment Law LAW-LW 10259 4.0 CR  
 Instructor: Samuel Estreicher  
 Constitutional Law LAW-LW 11702 4.0 CR  
 Instructor: Melissa E Murray  
 Federal Courts and the Federal System LAW-LW 11722 4.0 CR  
 Instructor: Helen Hershkoff

Current  
 Cumulative

AHRS  
 12.0  
 83.0  
 EHRS  
 12.0  
 83.0

Staff Editor - Journal of International Law & Politics 2018-2019  
 Editor-in-Chief - Journal of International Law & Politics 2019-2020

End of School of Law Record



Name: Heather McAdams  
Student ID: 701765345 Birthdate: Oct-06

Issued 06/15/2017  
Page 1 of 4

Degrees Awarded  
Degree: Honors Bachelor of Arts  
Date Conferred: May 27, 2017  
Degree Honors: Summa Cum Laude  
Degree Honors: Degree with Distinction  
Plan: International Relations Major  
Sub-Plan: U.S. Foreign Policy  
Plan: English Major  
Sub-Plan: Professional Writing  
Plan: Honors

Test Credits Applied Toward Arts and Sciences

		2013 Fall		
Course	Description	Attempted	Earned	Grade
BISC 208	INTRODUCTORY BIOLOGY II	4.000	4.000	CR
ENGL 280	APPROACHES TO LITERATURE	3.000	3.000	CR
ENGL 166T	TRANSFER ELECTIVE	3.000	3.000	CR
ENGL 166T	TRANSFER ELECTIVE	3.000	3.000	CR
ENGL 266T	TRANSFER ELECTIVE	3.000	3.000	CR
LATN 202	INTERMEDIATE LATIN POETRY	3.000	3.000	CR
PSYC 100	GENERAL PSYCHOLOGY	3.000	3.000	CR
STAT 200	BASIC STATISTICAL PRACTICE	3.000	3.000	CR
Test Trans GPA: 0.000		Transfer Totals: 25.000		25.000

Beginning of Undergraduate Record

2013 Fall Semester  
Program: Arts and Sciences  
Plan: International Relations Major Bachelor of Arts  
Plan: Honors

Course	Title	Earned Hrs	Grade	Quality Pts
ARSC 295	ARTS FORUM REQ DES: Honors	1.000	A	4.000
Topic: ECON 151	THE EXPRESSIVE BODY INTRO MICROECON: PRICES & MRKT REQ DES: Honors	3.000	A	12.000
ENGL 110	CRITICAL READING & WRITING REQ DES: Honors	3.000	A	12.000
JAPN 105	JAPANESE I - ELEMENTARY	4.000	A	16.000
MATH 221	CALCULUS I	3.000	A-	11.001
POSC 240	INTRO TO GLOBAL POLITICS REQ DES: Honors	3.000	A	12.000
UNIV 100	HONORS FIRST YEAR EXPERIENCE REQ DES: Honors and First Year Experience	0.000	P	0.000

Term GPA	3.941	Term Totals	Attempted	Earned	Quality Hrs	Points
		Transfer Totals	17.000	17.000	17.000	67.001
Cum GPA	3.941	Cum Totals	25.000	25.000	0.000	0.000
Term Honor:	Dean's List		42.000	42.000	17.000	67.001

2014 Winter  
Program: Arts and Sciences  
Plan: International Relations Major Bachelor of Arts  
Plan: English Major Bachelor of Arts  
Plan: Honors

Course	Title		Earned Hrs	Grade	Quality Pts	
POSC 150	INTRO TO AMERICAN POLITICS		3.000	A	12.000	
Term GPA	4.000	Term Totals	<u>Attempted</u> 3.000	<u>Earned</u> 3.000	<u>Quality Hrs</u> 3.000	<u>Points</u> 12.000
Cum GPA	3.950	Cum Totals	45.000	45.000	20.000	79.001



Name: Heather McAdams  
Student ID: 701765345 Birthdate: Oct-06

Issued 06/15/2017  
Page 2 of 4

2014 Spring Semester						
Program:	Arts and Sciences					
Plan:	International Relations Major Bachelor of Arts					
Plan:	English Major Bachelor of Arts					
Plan:	Honors					
Course	Title	Earned Hrs	Grade	Quality Pts		
ARSC 390	COLLOQUIUM	3.000	A	12.000		
Topic:	REQ DES: Honors					
	SOCIAL MOOD, DECISIONS & MKTS					
ECON 152	INTRO MACROECON: NATNL ECONOMY	3.000	A-	11.001		
	REQ DES: Honors					
ENGL 101	TOOLS OF TEXTUAL ANALYSIS	3.000	A	12.000		
GEOG 120	WORLD REGIONAL GEOGRAPHY	3.000	A	12.000		
	REQ DES: Multicultural					
JAPN 106	JAPANESE II - ELEMNTY/INTERMD	4.000	A	16.000		
		<u>Attempted</u>	<u>Earned</u>	<u>Quality Hrs</u>	<u>Points</u>	
Term GPA	3.938 Term Totals	16.000	16.000	16.000	63.001	
Cum GPA	3.945 Cum Totals	61.000	61.000	36.000	142.002	
Term Honor:	Dean's List					

2014 Fall Semester					
Program:	Arts and Sciences				
Plan:	International Relations Major Bachelor of Arts				
Plan:	English Major Bachelor of Arts				
Plan:	Japanese Minor				
Plan:	Honors				
Course	Title	Earned Hrs	Grade	Quality Pts	
ARSC 295	ARTS FORUM	1.000	A	4.000	
	REQ DES: Honors				
Topic:	GARDENS & GARDENING				
ECON 340	INTERNATIONAL ECONOMICS	3.000	A	12.000	
	REQ DES: Honors				
ENGL 222	INTRO TO PROFESSIONAL WRITING	3.000	A	12.000	
ENGL 392	TEACHING WRITING ONE-TO-ONE	3.000	A	12.000	
JAPN 107	JAPANESE III - INTERMEDIATE	4.000	A	16.000	
POSC 363	INTERNATIONAL LAW	3.000	A	12.000	
		Attempted	Earned	Quality Hrs	Points
Term GPA	4.000 Term Totals	17.000	17.000	17.000	68.000
Cum GPA	3.962 Cum Totals	78.000	78.000	53.000	210.002
Term Honor:	Dean's List				

2015 Winter									
Program:	Arts and Sciences								
Plan:	International Relations Major Bachelor of Arts								
Plan:	English Major Bachelor of Arts								
Plan:	Japanese Minor								
Plan:	Honors								
Course	Title	Earned Hrs	Grade	Quality Pts					
ENGL 208	INTRODUCTION TO DRAMA	3.000	A	12.000					
THEA 106	THEATRICAL EXPERIENCE ABROAD	3.000	A	12.000					
UNIV 370	STUDY ABROAD WINTER / SUMMER	0.000	P	0.000					
	REQ DES: Discovery Learning Experience								
Topic:	LONDON ENGL/THEA								
Term GPA	4.000 Term Totals	6.000	6.000	6.000	24.000				
Cum GPA	3.966 Cum Totals	84.000	84.000	59.000	234.002				

2015 Spring Semester									
Program:	Arts and Sciences								
Plan:	International Relations Major Bachelor of Arts								
Plan:	English Major Bachelor of Arts								
Plan:	Japanese Minor								
Plan:	Honors								
Course	Title	Earned Hrs	Grade	Quality Pts					
ARSC 293	FORUM	1.000	A	4.000					
Topic:	REQ DES: Honors								
ENGL 430	INTELLECT AND THE GOOD LIFE								
	LEGAL WRITING	3.000	A	12.000					
	REQ DES: Honors and A&S Writing								
HIST 138	EAST ASIAN CIVILIZATION: JAPAN	3.000	A	12.000					
	REQ DES: Multicultural								
JAPN 201	ADVANCED INTERMEDIATE JAP. I	3.000	A-	11.001					
	REQ DES: Honors								
POSC 313	AMERICAN FOREIGN POLICY	3.000	A	12.000					
POSC 446	INTERNTL HUMAN RIGHTS/FILM	3.000	A	12.000					
		Attempted	Earned	Quality Hrs	Points				
Term GPA	3.938 Term Totals	16.000	16.000	16.000	63.001				
Cum GPA	3.960 Cum Totals	100.000	100.000	75.000	297.003				
Term Honor:	Dean's List								
	General Honors Award								



Name: Heather McAdams  
Student ID: 701765345 Birthdate: Oct-06

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2015 Summer						2016 Spring Semester					
Program:	Arts and Sciences					Program:	Arts and Sciences				
Plan:	International Relations Major Bachelor of Arts					Plan:	International Relations Major Bachelor of Arts				
Plan:	English Major Bachelor of Arts					Plan:	English Major Bachelor of Arts				
Plan:	Japanese Minor					Plan:	Japanese Minor				
Plan:	Honors					Plan:	Honors				
Course	Title	Earned Hrs	Grade	Quality Pts		Course	Title	Earned Hrs	Grade	Quality Pts	
ENGL 464	INTERNSHIP IN BUS-TECH WRITING REQ DES: Discovery Learning Experience	3.000	P	0.000		ANTH 310	ASIAN WOMEN'S LIVES REQ DES: Multicultural	3.000	A	12.000	
		<u>Attempted</u>	<u>Earned</u>	<u>Quality Hrs</u>	<u>Points</u>	ENGL 413	TOPICS IN PROFESSIONAL WRITING REQ DES: A & S Writing Requirement	3.000	A	12.000	
Term GPA	0.000 Term Totals	3.000	3.000	0.000	0.000	Topic:	GENRES OF PROFESSIONAL WRITING				
Cum GPA	3.960 Cum Totals	103.000	103.000	75.000	297.003	ENGL 414	EDITING	3.000	A	12.000	
						JAPN 355	SPECIAL TOPICS	3.000	A	12.000	
						Topic:	INTRO TO JAPANESE LITERATURE				
						POSC 409	TOPICS IN WORLD POLITICS REQ DES: Honors	3.000	A	12.000	
						Topic:	INT CRIMINALS, CRIMES & COURTS				
						Term GPA	4.000 Term Totals	<u>Attempted</u> 15.000	<u>Earned</u> 15.000	<u>Quality Hrs</u> 15.000	<u>Points</u> 60.000
						Cum GPA	3.971 Cum Totals	133.000	133.000	102.000	405.003
						Term Honor:	Dean's List				
2015 Fall Semester						2016 Fall Semester					
Program:	Arts and Sciences					Program:	Arts and Sciences				
Plan:	International Relations Major Bachelor of Arts					Plan:	International Relations Major Bachelor of Arts				
Plan:	English Major Bachelor of Arts					Plan:	English Major Bachelor of Arts				
Plan:	Japanese Minor					Plan:	Japanese Minor				
Plan:	Honors					Plan:	Honors				
Course	Title	Earned Hrs	Grade	Quality Pts		Course	Title	Earned Hrs	Grade	Quality Pts	
JAPN 200	JAPANESE GRAMMAR & COMPOSITION	3.000	A	12.000		ENGL 205	BRITISH LITERATURE TO 1660	3.000	A	12.000	
JAPN 205	JAPANESE CONVERSATION	3.000	P	0.000		ENGL 450	LEGAL ARGUMENT REQ DES: A & S Writing Requirement	3.000	A	12.000	
POSC 309	POLITICAL CULTURE BY COUNTRY Topic: RUSSIAN SOCIETY TODAY	3.000	A	12.000		HIST 104	WORLD HISTORY II REQ DES: Multicultural	3.000	A	12.000	
POSC 409	TOPICS IN WORLD POLITICS Topic: INTERNATIONAL SECURITY	3.000	A	12.000		JAPN 204	THE ART OF JAPANESE CALLIGRAPH	3.000	A	12.000	
POSC 428	TOPICS IN ASIAN POLITICS Topic: JAPANESE CONSTITUTION AND LAW	3.000	A	12.000		UNIV 401	SENIOR THESIS REQ DES: Honors and Discovery Learning	3.000	A	12.000	
UNIV 373	STUDY ABROAD FALL / SPRING REQ DES: Discovery Learning Experience	0.000	P	0.000							
Topic:	AKITA, JAPAN										
		<u>Attempted</u>	<u>Earned</u>	<u>Quality Hrs</u>	<u>Points</u>			<u>Attempted</u>	<u>Earned</u>	<u>Quality Hrs</u>	<u>Points</u>
Term GPA	4.000 Term Totals	15.000	15.000	12.000	48.000	Term GPA	4.000 Term Totals	15.000	15.000	15.000	60.000
Cum GPA	3.966 Cum Totals	118.000	118.000	87.000	345.003	Cum GPA	3.974 Cum Totals	148.000	148.000	117.000	465.003
Term Honor:	Dean's List					Term Honor:	Dean's List				



Name: Heather McAdams  
Student ID: 701765345 Birthdate: Oct-06

Issued 06/15/2017  
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----- 2017 Spring Semester -----

Program: Arts and Sciences  
Plan: International Relations Major Bachelor of Arts  
Plan: English Major Bachelor of Arts  
Plan: Honors

Course	Title	Earned Hrs	Grade	Quality Pts
ENGL 204	AMERICAN LITERATURE	3.000	A	12.000
ENGL 206	BRIT LIT 1660 TO PRESENT	3.000	A	12.000
ENGL 303	SCRIPT WRITING	3.000	A	12.000
UNIV 402	SENIOR THESIS	3.000	A	12.000
REQ DES: Honors,A&S Writing,Discovery Learning				

		Attempted	Earned	Quality Hrs	Points
Term GPA	4.000 Term Totals	12.000	12.000	12.000	48.000
Cum GPA	3.977 Cum Totals	160.000	160.000	129.000	513.003

Term Honor: Dean's List

Undergraduate Career Totals

Cum GPA	3.977 Cum Totals	160.000	160.000	129.000	513.003
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End of OFFICIAL TRANSCRIPT

Erin E. Murphy  
Norman Dorsen Professor of Civil Liberties  
New York University School of Law  
40 Washington Square South, 419  
(212) 998-6672  
erin.murphy@nyu.edu

March 07, 2022

The Honorable Lewis Liman  
Daniel Patrick Moynihan United States Courthouse  
500 Pearl Street, Room 701  
New York, NY 10007-1312

RE: HEATHER MCADAMS

Dear Judge Liman:

I write to give my most enthusiastic recommendation to Heather McAdams's application for a clerkship in your chambers. I first met Heather as a 2L in a small seminar, and then she joined my large Evidence class as a 3L. Based on my positive experiences, I hired her as a research assistant for a complex project related to my work on the Model Penal Code. She is an outstanding student with an eye for detail and will make an exceptional law clerk.

My first encounters with Heather occurred in my 30-person seminar on professional responsibility in the criminal context. The course attracts a mix of students, but many of them have plans to pursue a career in criminal justice. I design the course to confront the real and difficult ethical challenges of criminal practice – ranging from the scope of discovery to post-conviction integrity. Our discussions are often heated and passionate, as students grapple with the difficulties of drawing lines in a field where nuance prevails. Heather was a frequent and valuable contributor in class – and most importantly, her contributions showed that she had always read the material and carefully considered and engaged with it. It is this latter quality that distinguished her, as it is a course that can invite opining without preparation. But Heather was always assiduous in completing the assignments and scaffolding her comments with reference to the material. I was pleased when she joined my Evidence class; even though the size and format was starkly different from our seminar. Although she did not perform as strongly on that multiple-choice, Federal Rules-based exam, her overall transcripts affirms that she performs well across a broad range of topical areas.

My strongest basis of recommendation, however, is the work that she performed for me immediately after her graduation, while studying for the Bar. I am the Associate Reporter for the American Law Institute's Model Penal Code revision project, and after a decade of work, our project has been winding down its final phases. The blackletter and its commentary run roughly 500 pages, with portions written at various stages of the project. I hired Heather and another student to complete a thorough review of the document – everything from a traditional source checking to bluebooking and grammar corrections. It was effectively like spending the summer sub-citing and tech-citing twenty of the densest law review articles imaginable.

Heather performed the work beautifully. She was able to follow my instructions, which contained strange details and minutiae reflective of the ALI process. She meticulously checked every item – adding parentheticals where they were missing, updating and correcting statutory, journal, and legal citations, volunteering support from more recent material we had not uncovered, and thoroughly scrubbing the text. She did such a terrific job that I actually ended up pulling work from the other student, who had not shown herself capable of performing to the standard that I required (while Heather, meanwhile, far exceeded it!) She also did all this work on a tight and inflexible timeline, and while studying for the Bar. I was thoroughly impressed by her skill, maturity, and meticulous attention to detail in a task that was no doubt at times exhausting and repetitive. It was work very much like a law clerk's, which is how I know she will succeed in any chambers.

Heather's sophisticated ability to understand our objective and rise to both the substantive and technical challenge is likely in part informed by her own experience as an author. Apart from publishing her Note, she has also published additional work in various journals covering her interests in both criminal law and international justice. Finally, as a graduate of the class of '20 with ample work experience under her belt, she will bring to a clerkship a sophisticated understanding of the mechanics of litigation and federal practice.

In short, Heather would make an exceptional law clerk, and I highly commend her to your consideration. If you have any questions or concerns, please do not hesitate to contact me.

Sincerely,

Erin E. Murphy  
Norman Dorsen Professor of Civil Liberties

Erin Murphy - erin.murphy@nyu.edu - (212) 998-6672

New York University School of Law

Erin Murphy - erin.murphy@nyu.edu - (212) 998-6672



**New York University**

*A private university in the public service*

School of Law

40 Washington Square South, 329  
New York, New York 10012-1099  
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Facsimile: (212) 995-4341/4036  
Email: samuel.estreicher@nyu.edu

SAMUEL ESTREICHER

*Dwight D. Opperman Professor of Law  
Director, Center for Labor and Employment Law and  
Co-Director, Institute of Judicial Administration*

June 14, 2021

**RE: Heather McAdams, NYU Law '20**

Your Honor:

It is my pleasure to write on behalf of Heather M. McAdams, a 2020 graduate of NYU Law, currently with the Hogan Lovells firm, who is applying for a clerkship in your chambers.

Heather's interests are principally in the areas of criminal law and international law. She served as the editor-in-chief of the Journal of International Law and Politics, our second-highest ranking student journal. She is very hard-working and productive, having published an article on enhancing sanctions for human trafficking in the University of Pennsylvania Law Review (Online) in 2020.

I know Heather in large part from her excellent class participation and research paper on the relative underutilization of "indirect discrimination" (what we call disparate-impact) analysis in Japanese employment discrimination law.

Heather is an exceptional talent. I urge you to interview and hire her.

Sincerely,

Samuel Estreicher



**U.S. Department of Justice**

*United States Attorney  
Eastern District of New York*

---

610 Federal Plaza  
Central Islip, New York 11722

April 29, 2021

To Whom It May Concern:

This letter is to enthusiastically recommend Heather McAdams for a position as a judicial law clerk. Heather was an extern in our Brooklyn office in the fall of 2018. In my 15 years combined service as a Judge Advocate in the Army, an Assistant District Attorney in the Manhattan DA's office and most recently as an Assistant United States Attorney in the EDNY, I have worked with hundreds of attorneys and over fifty law school interns. Heather easily ranks among the top interns with whom I have worked and I am certain she will be an outstanding law clerk.

The first few assignments I gave to Heather were to draft legal memoranda regarding matters for which I was unfamiliar. I was so impressed with Heather's work product that I quickly came to rely upon her to handle all facets of work performed by federal prosecutors. She assisted with drafting prosecution memos, indictments, search warrants, plea agreements, responses to pre-trial motions and other assignments relevant to criminal practice. Based on her work product, I not only rank her as one of the top interns with whom I have worked, I also rank her among the top attorneys as well.


Aside from her incredible work ethic, Heather is a genuinely nice and thoughtful person. I valued her opinions regarding charging decisions and enjoyed our many conversations about legal issues. From my experience as a prosecutor, I understand the importance of having colleagues that are team players and adhere to the highest ethical principles. Heather is that type of person.

In summary, I cannot say enough about Heather. She will do outstanding work as a law clerk and I recommend her without reservation. Should you need further information about Heather, please feel free to contact me. I can be reached via telephone at (631) 715-7889 or via email at oren.gleich@usdoj.gov.

Very truly yours,

MARK J. LESKO  
Acting Assistant United States Attorney

By:

  
Oren Gleich  
Assistant U.S. Attorney  
(631) 715-7889

**WRITING SAMPLE**

Heather McAdams  
41-21 28th St., Apt. 8F  
Long Island City, NY 11101  
(302) 753-9628  
hmcadams429@gmail.com

The attached writing sample is an excerpt from an essay that I wrote during my third year of law school, independent of coursework, entitled *Liquidated Damages or Human Trafficking?: How a Recent Eastern District of New York Decision Could Impact the Nationwide Nursing Shortage*. The essay analyzed the reasoning and potential impact of a recent Eastern District of New York (EDNY) decision that held that excessive liquidated damages for early resignation from “term” contracts for foreign-born nurses can violate the Trafficking Victims Protection Act (TVPA).

The attached excerpt is from the version of the essay that I submitted to law reviews for publication in January 2020. It is thus current as of that date and unedited by any law review staff. The University of Pennsylvania Law Review Online published an edited version of this submission in April 2020 as an online essay. It is available at <https://www.pennlawreview.com/2020/05/12/liquidated-damages-or-human-trafficking-how-a-recent-eastern-district-of-new-york-decision-could-impact-the-nationwide-nursing-shortage/> or <https://tinyurl.com/2br4he3p>.

This excerpt eliminates the introduction and factual background from the original essay in the interest of concision. For context, most U.S. healthcare facilities recruit foreign-educated nurses under multiyear term contracts that impose an exceedingly high liquidated damages penalty (usually \$20,000 to \$30,000) on nurses who resign before the end of the term. This practice is generally intended to combat the nationwide nursing shortage. However, in September 2019, the EDNY held that the practice constitutes forced labor under the TVPA. Only weeks after the ruling, a complaint based on similar practices was filed in the Northern District of New York (NDNY), signaling potential for the EDNY ruling to have widespread impact. The excerpt retains the remainder of the essay, which analyzes the EDNY ruling, applies the ruling to the claim filed with the NDNY, and concludes with a discussion of the potential national impact of the rulings.

## II. The Eastern District of New York (EDNY) Judgment

In 2006, Rose Ann Paguirigan was recruited from the Philippines to work in a New York nursing home.<sup>25</sup> After a lengthy visa approval process, Paguirigan signed a three-year contract in 2015.<sup>26</sup> The contract offered salaried employment at one of several Sentosa Care nursing homes, and specified liquidated damages of “up to \$25,000” if the employee resigned before the end of the three-year term.<sup>27</sup> The latter provision also required the employee to “execute a confession of judgment for \$25,000,” which the employer could file in court if the employee left before the end of the term.<sup>28</sup> Paguirigan was ultimately placed at Spring Creek, a Sentosa Care facility in Brooklyn, and began work in June 2015; she resigned within nine months.<sup>29</sup>

Despite the fact that Paguirigan had been committed to pursuing this opportunity for nearly a decade, she could no longer work under the conditions at Spring Creek. She was paid less than the salary specified in the contract,<sup>30</sup> and working conditions were unexpectedly harsh. In addition to the typical issues associated with understaffing, Filipino nurses bore the brunt of the problems, as their supervisors were aware that the liquidated damages provisions in their contracts made them less able to leave in the face of burdensome shifts and resulting fatigue.<sup>31</sup>

When Prompt Nursing, the staffing agency that controlled Paguirigan’s contract, filed suit against her to enforce the liquidated damages provision in her contract, Paguirigan filed a lawsuit herself, naming the staffing agency, her employer, and all other agencies and employers

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<sup>25</sup> Paguirigan v. Prompt Nursing Emp. Agency LLC, No. 17-cv-1302(NG)(JO), 2018 U.S. Dist. LEXIS 156331, at \*3 (E.D.N.Y. Sept. 11, 2018).

<sup>26</sup> *Id.* at \*3–4.

<sup>27</sup> *Id.* at \*5.

<sup>28</sup> *Id.*

<sup>29</sup> *Id.* at \*6–7.

<sup>30</sup> *Id.* at \*8.

<sup>31</sup> *Over 200 Pinoy Nurses in NY to Benefit from Court Win in Human-Trafficking Case*, *supra* note 21.

involved in her recruitment as defendants.<sup>32</sup> She filed on behalf of 200 other Filipino nurses employed at Sentosa Care facilities, accusing all defendants of including an unenforceable liquidated damages provision in the contract, breaching contract, and violating the TVPA.<sup>33</sup>

U.S. District Judge Nina Gershon issued her ruling on these claims on September 23, 2019, finding for Paguirigan on all counts on summary judgment.<sup>34</sup> Judge Gershon easily disposed of the breach of contract claim first<sup>35</sup>: Because this claim was based on defendants' failure to pay Paguirigan the amount specified in the contract, it was both the least contentious issue and unrelated to the other claims, which involved the liquidated damages provision.

Not only were Paguirigan's other claims more interrelated, but they represent the key influential aspects of Judge Gershon's ruling. These claims are the reason that this ruling could impact the entire nurse recruitment system not only in New York, but across the country.

Judge Gershon first found that the liquidated damages provision was unenforceable. Simply put, liquidated damages will not be enforced if contrary to public policy, and public policy disallows such provisions if they "do[] not serve the purpose of reasonable measuring the anticipated harm, but [are] instead punitive in nature, serving as a mere 'added spur to performance.'"<sup>36</sup> While it is already damning that the contract's confession of judgment goes as far as to "outright state that its purpose is to 'secure Employee's performance of the Employment Term,'" <sup>37</sup> Judge Gershon additionally noted that New York construes liquidated damages provisions "strictly," such that where damages are "plainly disproportionate to the contemplated

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<sup>32</sup> Paguirigan v. Prompt Nursing Emp. Agency LLC, No. 17-cv-1302(NG)(JO), 2019 U.S. Dist. LEXIS 165587, at \*1, 9 (E.D.N.Y. Sept. 23, 2019).

<sup>33</sup> *Id.* at \*1–3.

<sup>34</sup> *Id.* at \*60–61.

<sup>35</sup> *Id.* at \*13–22.

<sup>36</sup> *Id.* at \*22–23.

<sup>37</sup> *Id.* at \*24.

injury,” they will be treated as a penalty.<sup>38</sup> Because \$25,000 would take so long to pay off with Paguirigan’s salary, and because the defendants failed to show expenditures related to recruiting that exceeded even \$5,000, Judge Gershon found that the provision was a penalty and thus unenforceable.<sup>39</sup> This finding would resurface in the consideration of the TVPA claims.

Paguirigan brought several claims under different provisions of the TVPA, but the most important claim is that the defendants violated the forced labor clause of the TVPA, which prohibits the obtaining of labor or services by means of “serious harm or threats of serious harm” or “the abuse or threatened abuse of law or legal process,” among other untoward methods.<sup>40</sup> The TVPA defines “serious harm” as “physical or nonphysical [harm], including psychological, financial, or reputational harm, that is sufficiently serious, under all the surrounding circumstances, to compel a reasonable person of the same background and in the same circumstances to perform or to continue performing labor or services in order to avoid incurring that harm.”<sup>41</sup> It also defines “abuse of law or legal process” as the use of law, “whether administrative, civil, or criminal, in any manner or for any purpose for which the law was not designed, in order to exert pressure on another person.”<sup>42</sup> Paguirigan argued that the defendants, specifically Prompt Nursing, violated the TVPA by using both threats of harm and abuse of law or legal process. This was based on several facts: the \$25,000 liquidated damages provision; Prompt Nursing’s previous lawsuits to enforce these provisions, which they often escalated when lower courts found the provisions unenforceable; and the filing of professional disciplinary complaints against nurses who resigned, which did not result in action against the nurses but

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<sup>38</sup> *Id.* at \*23.

<sup>39</sup> *Id.* at \*24, 35.

<sup>40</sup> 18 U.S.C. § 1589(a) (2012).

<sup>41</sup> 18 U.S.C. § 1589(c)(2) (2012).

<sup>42</sup> 18 U.S.C. § 1589(c)(1) (2012).

nevertheless prompted the defendants to speak with the Suffolk County District Attorney about prosecuting them.<sup>43</sup>

As an initial matter, Judge Gershon rejected the defendants' argument that "efforts to enforce a liquidated damages provision that was valid . . . did not give rise to TVPA liability," based on the fact that she had found that the liquidated damages provision was *not* valid.<sup>44</sup> After rejecting several other alternative arguments from the defendants, Judge Gershon ultimately held that the defendants were liable for violation of the TVPA. She found that the \$25,000 liquidated damages provision constituted "serious financial harm," especially given the "particular vulnerabilities" of recent Filipino immigrants to the United States.<sup>45</sup> Additionally, based on the intention stated in the confession of judgment and the history of the defendants filing lawsuits to enforce the liquidated damages, she determined that Prompt Nursing acted with the "knowledge and intent" required to find a violation of the TVPA.<sup>46</sup>

Judge Gershon concluded the judgment by finding that the TVPA extends liability to the other defendants, who either actively recruited the nurses themselves or were sufficiently part of a "joint enterprise" to constitute conspiracy under the TVPA.<sup>47</sup> Thus, on summary judgment, Paguirigan prevailed against the defendants on all counts.

### III. The Lawsuit Filed in the Northern District of New York (NDNY)

Only a few weeks after Judge Gershon decided *Paguirigan*, the New York State Nurses Association (NYSNA) nurses' union announced that it planned on filing a similar lawsuit against

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<sup>43</sup> *Paguirigan*, 2019 U.S. Dist. LEXIS 165587, at \*47.

<sup>44</sup> *Id.* at \*48.

<sup>45</sup> *Id.* at \*53–54.

<sup>46</sup> *Id.* at \*55.

<sup>47</sup> *Id.* at \*55–59.

Albany Med hospital in the NDNY.<sup>48</sup> Clearly inspired by *Paguirigan*, the NYSNA contends that a \$20,000 penalty, which Albany Med terms a “placement fee,” for leaving a three-year contract constitutes forced labor.<sup>49</sup> Moreover, the NYSNA highlights that according to the contract, failure to repay these fees “may constitute fraud,” and Albany Med may report this failure “to the Bureau of Citizenship and Immigration Services under applicable immigration fraud statutes.”<sup>50</sup> Like *Paguirigan*, the Albany Med nurses also signed a confession of judgment.<sup>51</sup>

Dennis McKenna, the Albany Med CEO-designate, publicly responded to this announcement,<sup>52</sup> hinting at the legal strategy the hospital will employ if the lawsuit proceeds. McKenna called the lawsuit “a grotesque perversion of the original intent of the [TVPA],”<sup>53</sup> and emphasized that Albany Med had never pursued legal action against nurses who resigned early,<sup>54</sup> though the complaint disputes this.<sup>55</sup> McKenna further branded the announcement and lawsuit a negotiation tactic,<sup>56</sup> a believable accusation in light of the recent strike over the nursing shortage at Albany Med,<sup>57</sup> but equally as possible as the alternative: that the NYSNA waited for a favorable judgment from another court to pursue these accusations.

While it is certainly possible that the NYSNA threatened the lawsuit only as a negotiation tactic, and so the situation will not escalate any further, *Paguirigan* provided a basis for similar rulings in other districts, including the NDNY. Granted, without access to the NYSNA complaint

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<sup>48</sup> Bethany Bump, *Lawsuit: Albany Med’s Filipino Nursing Program Violates Human Trafficking Law*, TIMES UNION (Oct. 14, 2019), <https://www.timesunion.com/news/article/Lawsuit-Albany-Med-s-Filipino-nursing-program-14521113.php>.

<sup>49</sup> *Id.*

<sup>50</sup> *Id.*

<sup>51</sup> *Id.*

<sup>52</sup> *Id.*

<sup>53</sup> *Id.*

<sup>54</sup> Young, *supra* note 24.

<sup>55</sup> Bump, *supra* note 48.

<sup>56</sup> *Id.*

<sup>57</sup> John Cropley, *Nurses Rally Over Long-Running Albany Med Contract Talks*, DAILY GAZETTE (Sept. 25, 2019), <https://dailygazette.com/article/2019/09/25/nurses-rally-over-long-running-albany-med-contract-talks>.

and the response from Albany Med, it is difficult to predict with certainty whether the NDNY will follow the judgment of the EDNY. However, the information that the NYSNA and Albany Med shared publicly are enough to estimate the strength of the suit.

As an initial matter, it is worth emphasizing that *Paguirigan* was a ruling on summary judgment. In other words, on all counts, the plaintiff was able to show that there was no dispute of fact and she was “entitled to summary judgment as a matter of law.”<sup>58</sup> While such a ruling does imply to a certain extent that the decision was fairly clear-cut, it is not uncommon for summary judgments to be overturned on appeal. On one hand, then, the NDNY might find *Paguirigan* to be all the more persuasive, but on the other hand, the NDNY may instead be incentivized to delay decision on this lawsuit, pending potential appeal of *Paguirigan* to the Second Circuit, which could issue a firmly binding decision on the matter.<sup>59</sup>

In any event, it can be assumed that the NYSNA claims will include unenforceability of the \$20,000 fee and violation of the TVPA. While the TVPA analysis is fairly straightforward, the unenforceability analysis may be a difficult hurdle for the NYSNA to overcome. The *Paguirigan* defendants attempted to demonstrate that they invested an amount equivalent to the \$25,000 penalty, even calling an expert witness to determine their expenditures.<sup>60</sup> However, Judge Gershon refused to consider the expert testimony; because the expert did not base his cost analysis on his own “independent evaluation,” but on short summaries and “untested and

<sup>58</sup> Fed. R. Civ. P. 56(a).

<sup>59</sup> Incidentally, during the writing of this comment, an appeal of the EDNY decision was in fact filed on October 23, 2019. *Appellate History of Paguirigan v. Prompt Nursing Emp. Agency LLC*, 2019 U.S. Dist. LEXIS 165587, LEXIS, <https://advance.lexis.com/shepards/?pdmfid=1000516&crd=07962c1e-f42a-46f1-b671-eb3bd31c1dee&pdshepid=urn%3AcontentItem%3A5X4W-P4R1-DXC8-725D-00000-00&pdshepcat=history&pdshephistsummary=4&ecomp=1s39k&priid=3b9455fd-bc2b-4175-9796-e6577df0fd95> (last visited Oct. 28, 2019). Based on this, it is a very real possibility that the NDNY will delay the decision on this lawsuit, given that anything could happen as the result of this appeal, from complete rejection of the EDNY ruling to acceptance such that it becomes binding on all Second Circuit district courts.

<sup>60</sup> *Paguirigan v. Prompt Nursing Emp. Agency LLC*, No. 17-cv-1302(NG)(JO), 2019 U.S. Dist. LEXIS 165587, at \*27 (E.D.N.Y. Sept. 23, 2019).

contradicted facts provided by defense counsel,” his testimony was unreliable and thus inadmissible.<sup>61</sup> It is not clear whether Albany Med will fare better on this point. Perhaps both hospitals truly did spend a proportional amount to recruit nurses; in that case, Albany Med’s success could depend only on whether it kept clearer records. But perhaps neither hospital spent a proportional amount on recruitment, and the *Paguirigan* defendants attempted to argue otherwise as best as feasibly possible; in that case, Albany Med’s result should not differ much.

If Albany Med cannot demonstrate that its costs were proportional to \$20,000, the NDNY will likely find the provision unenforceable. While it is unclear whether the contract here also outright states the intention to compel employees to remain for the duration of the term, the amount of the fee in comparison to the nurses’ salaries would still “support[] the conclusion that this provision is ‘intended to operate as a means to compel performance.’”<sup>62</sup> Not to mention, the fact that the parties were of “unequal bargaining power” would almost certainly hold true here.<sup>63</sup>

If this provision is still unenforceable in the NDNY, its validity cannot bar a claim under the TVPA, which Albany Med will likely argue in two ways. The most obvious argument would be that the TVPA was not enacted for the purpose of punishing employers who recruit foreign-educated employees and merely want to protect their investment. Albany Med’s statements indicate that it is considering this argument.<sup>64</sup> However, given that the “fundamental purpose of [the TVPA forced labor clause] is to reach cases of servitude achieved through nonviolent coercion,”<sup>65</sup> it is difficult to imagine what alternative situations the clause *is* anticipating,

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<sup>61</sup> *Id.* at \*34.

<sup>62</sup> *Id.* at \*24.

<sup>63</sup> *Id.* at \*24–25.

<sup>64</sup> See *supra* note 53 and accompanying text.

<sup>65</sup> *Paguirigan v. Prompt Nursing Emp. Agency LLC*, 286 F. Supp. 3d 430, 439 (E.D.N.Y. 2017). Legislative history of the forced labor clause offers analogous support of the applicability of the forced labor clause to this situation. A 2007 congressional report explains the addition of the misdemeanor crime of forced labor, expressly envisioning a “scheme that creates an ongoing dependency on a recruiter such as a fee that eats up more than 1% of the [promised] total wage.” H.R. REP. NO. 110-430, pt. 1, at 54 (2007). The described situation is clearly analogous to the

especially when the clause specifically references threats of serious financial harm. Furthermore, there is a reasonable argument that the TVPA is necessary to apply here; based on how widespread this practice is and how successfully some employers have pursued legal action even when the liquidated damages are unenforceable,<sup>66</sup> nurses in this situation require stronger protection than simply the ability to claim the damages are unenforceable. As the situation currently stands, the only realistic recourse for recently immigrated Filipino nurses is to challenge the enforceability of the contract provisions. While it appears that such recourse can be successful,<sup>67</sup> it is not enough on its own. First, if a nurse successfully challenges a contract provision, it does not necessarily stop the employer from continuing to use the provision in future contracts; this is evident in even *Paguirigan*, in which prior history revealed that the employer continued to use and enforce the liquidated damages provision, despite a prior lower court ruling that the provision was unenforceable.<sup>68</sup> Protection under the TVPA means that these provisions are not just unenforceable; they are criminal. The consequences associated with a criminal charge are far greater deterrents than the consequences of a finding on unenforceability.<sup>69</sup> Second, and relatedly, contract disputes require a certain level of resources; the injured nurses would either need to hire a lawyer or find one to work pro bono. Neither

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dependency that an employer creates by enforcing liquidated damages that constitute half the promised yearly salary, indicating that Congress intended for such practices to constitute criminal acts under the TVPA.

<sup>66</sup> See *Paguirigan*, 2019 U.S. Dist. LEXIS 165587, at \*47; Pittman et al., *supra* note 5, at 38.

<sup>67</sup> In fact, this is exactly what happened prior to *Paguirigan*, which arose in part because Sentosa Care filed lawsuits in 2016 to enforce the liquidated damages provision at issue, despite the fact that the Nassau County Supreme Court in 2010 deemed the clause unenforceable after a Filipino nurse challenged the provision in court. *Paguirigan*, 2019 U.S. Dist. LEXIS 165587, at \*47.

<sup>68</sup> *Id.*

<sup>69</sup> Compare Meirav Furth-Matzkin, *On the Unexpected Use of Unenforceable Contract Terms: Evidence from the Residential Rental Market*, 9 J. LEGAL ANALYSIS 1, 32 (2017) (indicating that the harshest penalty for a finding of unenforceability in the residential context is that the court will issue “legal sanctions, such as court-awarded damages,” and that when the risk of sanctions is low, companies in the residential context may continue to use clauses they know are unenforceable), with 18 U.S.C. § 1589(d) (2018) (indicating that violation of the TVPA can result in up to twenty years of imprisonment, fines “under this title,” or both), and *id.* § 3571 (putting a cap on fines under Title 18 of up to \$250,000 for individuals and \$500,000 for organizations).

option is particularly realistic given the typical lack of community ties and financial resources that recent Filipino immigrants face. However, if these provisions rise to the level of a criminal act, the injured nurses could pass the pursuit of their complaints to authorities and prosecutors.

Albany Med's other option is to lean on its assertion that it has never taken legal action against nurses who resigned before the end of their term.<sup>70</sup> In *Paguirigan*, the fact that the defendants had a history of aggressively pursuing legal action against nurses who resigned early was crucial to the TVPA analysis: It evidenced that the defendants *intended* to cause reasonable people in the nurses' position to take the threat seriously and continue working because of it.<sup>71</sup> Absent evidence that Albany Med has pursued legal action, or that its contracts outright stated this intention, the hospital may prevail here. However, the extreme intensity of the threats in Albany Med contracts may stand in the way of its victory: the threat to report nurses for fraud in addition to the liquidated damages is severe enough, but the mention of immigration authorities would carry disturbing implications for any employee in the nurses' position as recent immigrants.

While the *Paguirigan* defendants only threatened financial harm, the contracts that Albany Med offered Filipino nurses also threaten criminal charges and, implicitly, deportation.<sup>72</sup> It is possible that Albany Med didn't file lawsuits against nurses because very few, if any, did so, as they were facing threats so severe that they didn't dare risk resigning without paying. In today's political climate, which sees frequent and indiscriminate government immigration raids<sup>73</sup> and

<sup>70</sup> The NYSNA complaint counters that "some Filipino nurses have breached the contract and were ordered to pay." Bump, *supra* note 48. However, because the details and evidence of these instances are not yet known, this paper treats Albany Med's claims as fact, and thus assumes that it has never taken legal action against the nurses.

<sup>71</sup> *Paguirigan*, 2019 U.S. Dist. LEXIS 165587, at \*54.

<sup>72</sup> See Bump, *supra* note 48.

<sup>73</sup> See Miriam Jordan, *More Than 2,000 Migrants Were Targeted in Raids. 35 Were Arrested.*, N.Y. TIMES (July 23, 2019), <https://www.nytimes.com/2019/07/23/us/ice-raids-apprehensions.html>.

attacks on the rights of even legal nonresidents,<sup>74</sup> the threat of involving federal immigration is very real, very vivid, and perhaps even more coercive than a \$20,000 penalty. Further, a judge could easily conclude that the presence of these threats in the contract *all but* outright states an intention to coerce employees to remain for the contract term; to avoid this, Albany Med would have to come up with an alternative reason for including these threats. While possible, it seems unlikely that any other interpretation could be as believable as intention to coerce.

While several aspects of the Albany Med situation differ from the facts of *Paguirigan*, they should balance out to the same result. Although some facts are still unclear, those that *are* known highlight the similarities between the fact patterns. Just as *Paguirigan* seemingly prompted other action within weeks, if the NDNY finds Judge Gershon's logic persuasive, it could spur a spate of similar lawsuits across the other Second Circuit districts. Furthermore, the NDNY has the opportunity to indicate how narrow this ruling will be—will it treat these situations as fact-specific, or will a general ruling eventually develop? Such a ruling could potentially be so broad as to hold that all disproportionate liquidated damages in foreign-educated nurse contracts presumably violate the forced labor clause of the TVPA. But it doesn't end there—theoretically, *any* federal district court could find the *Paguirigan* ruling persuasive.

#### IV. Conclusion: National Impact

New York is far from the only state with healthcare facilities that offer these contracts to foreign-educated nurses. As discussed, the practice of recruiting foreign-educated nurses under contracts with high liquidated damages is widespread across the United States,<sup>75</sup> and has prompted a fair amount of research into this process and its effects.<sup>76</sup> Any federal court could be

<sup>74</sup> See Michael D. Shear et al, *Trump's Policy Could Alter the Face of the American Immigrant*, N.Y. TIMES (Aug. 14, 2019), <https://www.nytimes.com/2019/08/14/us/immigration-public-charge-welfare.html>.

<sup>75</sup> See *supra* notes 4–9 and accompanying text.

<sup>76</sup> See, e.g., Brush, *supra* note 8, at 78; Pittman et al., *supra* note 5, at 38; Pittman et al., *supra* note 11, at 351.

inspired by the *Paguirigan* ruling as it stands,<sup>77</sup> but if other New York districts begin to follow suit, the ruling could take on a level of persuasiveness that impacts law across the country.

This is only possible insofar as the New York laws utilized in these opinions do not depart too drastically from other state laws. However, based on the rationale of *Paguirigan*, this is not problem. Judge Gershon used law specific to New York sparingly, relying on U.S. Supreme Court and federal precedent whenever possible. This is particularly true of her conclusion that liquidated damages are unenforceable if used to “spur . . . performance” and her interpretation of the TVPA, a federal statute—the two key aspects of the case.<sup>78</sup> It would be a simple matter for other states to essentially copy the reasoning—and given the ruling’s detail and reliance on federal law, it may have even been Judge Gershon’s intention that they do so.<sup>79</sup>

If these rulings have an impact outside of New York, they have the potential to derail the entire national system of nurse recruitment. Courts in other states may not even have to rule on the matter for hospitals to take steps to protect themselves from liability. Eyes outside of New York have already turned toward the situation in Albany; during one regional nurse practitioner’s conference at the end of October in King of Prussia, Pennsylvania, the keynote speaker referenced the situation as part of her speech on human trafficking.<sup>80</sup> For the hospitals that use contracts with liquidated damages that are truly proportional to the hospital’s recruiting costs, records will certainly be more carefully curated. Meanwhile, for hospitals that threaten

<sup>77</sup> For a brief description of the relationship between district courts, see Joseph W. Mead, *Stare Decisis in the Inferior Courts of the United States*, 12 NEV. L.J. 787, 791 (2012).

<sup>78</sup> *Paguirigan v. Prompt Nursing Emp. Agency LLC*, No. 17-cv-1302(NG)(JO), 2019 U.S. Dist. LEXIS 165587, at \*22–23, 44–55 (E.D.N.Y. Sept. 23, 2019).

<sup>79</sup> For a review of reasons why judges give detailed options, see generally Mathilde Cohen, *When Judges Have Reasons Not to Give Reasons: A Comparative Law Approach*, 72 WASH & LEE L. REV. 483 (2015).

<sup>80</sup> Jessica Peck, Baylor University, Louise Herrington School of Nursing, Keynote Address at the Pennsylvania Delaware Valley Chapter of the National Association of Pediatric Nurse Practitioners 2019 Annual Fall Conference: Educating Advocates for Child Health (Oct. 25, 2019); see also *Annual Fall Full Day Conference: 2019 Fall Conference Agenda*, PA. DEL. VALLEY CHAPTER NAT’L ASS’N PEDIATRIC NURSE PRAC., <https://community.napnap.org/padelawarevalleychapter/new-item2/new-item2> (last visited Oct. 27, 2019).

disproportionate damages, the impact will be stronger. Perhaps their response will be to lessen the contract damages to be more proportional. It is more likely, though, that these hospitals stipulated upwards of \$20,000 because it actually was worth *that much* to have a guaranteed nurse for three years; in that case, these hospitals may decide recruiting abroad simply isn't worth it if they cannot apply a coercive penalty. From the perspective of such hospitals, *Paguirigan* (and any subsequent rulings in the same vein) effectively closes off one way in which understaffed hospitals cope with the nursing shortage.

The impact of this “closing off” will depend greatly on how many hospitals use contracts with grossly disproportionate liquidated damages. For example, contracts that impose, say, a penalty of \$8,000<sup>81</sup> would likely be unaffected by *Paguirigan*, whereas contracts with penalties closer to \$15,000<sup>82</sup> may be in trouble, depending on what expenditures the employer can prove. However, at least one study has demonstrated a pattern of liquidated damages that has little to do with the hospital's expenditures,<sup>83</sup> indicating that proportionality is not the hospital's primary concern when drafting such contracts. Thus, it is not hyperbolic to speculate that, if *Paguirigan* ends up launching a domino effect in U.S. courts, a core strategy in the nationwide system of nurse recruitment could suddenly become unavailable, thus drastically exacerbating the nursing shortage almost overnight. In other words, while the practices of the healthcare facilities at issue in the New York cases are certainly exploitative and deserving of punishment, punishing them under the TVPA may result in unintended consequences for the healthcare system across the country, which is already overburdened and understaffed.

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<sup>81</sup> See *Paguirigan*, 2019 U.S. Dist. LEXIS 165587, at \*53.

<sup>82</sup> See *id.*

<sup>83</sup> See Pittman et al., *supra* note 11, at 358 (identifying instead a possible negative correlation between the amount of liquidated damages in the contract and the income of the country in which the nurse was educated).

**Applicant Details**

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Date of JD/LLB	<b>May 26, 2022</b>
Class Rank	<b>School does not rank</b>
Law Review/Journal	<b>Yes</b>
Journal(s)	<b>Harvard Civil Rights–Civil Liberties Law Review</b>
Moot Court Experience	<b>No</b>

**Bar Admission****Prior Judicial Experience**

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May 6, 2022

The Honorable Lewis J. Liman  
United States District Court for the Southern District of New York  
Daniel Patrick Moynihan United States Courthouse  
500 Pearl Street, Room 701  
New York, NY 10007-1312

Dear Judge Liman:

I am writing to apply for a clerkship in your chambers for the 2024-25 terms. Although I am a 2022 graduate of Harvard Law School and I will be moving to Washington, DC after graduation, I grew up in Ithaca, New York and I hope to return to New York City, where I worked for nearly five years prior to law school.

Enclosed please find my resume, law school transcript, undergraduate transcript, and writing sample. The following individuals will be submitting letters of recommendations separately, and in the meantime they welcome inquiries regarding my application:

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rfallon@law.harvard.edu  
617-495-3215

In August 2022 I will begin a one-year position as Public Citizen's Supreme Court Assistance Project Fellow. I will coordinate assistance to lawyers with public-interest cases before the Supreme Court, including helping with petitions for certiorari or briefs in opposition and briefing on the merits. I will also assist on other cases at all levels of the federal courts. Thus, by 2023 I will have finished an immersive experience in federal litigation better preparing me to take on the duties of a clerkship.

Three experiences have helped me hone the research and writing skills that I began developing in the nearly five years I spent working at a labor union federation before law school. First, in a course on appellate advocacy I received detailed feedback on my persuasive writing as I drafted portions of appellate briefs. Second, working at union-side labor law firms during not only my 1L and 2L summers but also my 2L fall gave me ample opportunities to write legal memos testing my research abilities. Finally, as an Executive Technical Editor and Lead Article Editor on the *Harvard Civil Rights-Civil Liberties Law Review*, I have learned to meticulously edit and prepare law review articles for publication.

I would be excited to contribute my experience and skills to the work of your chambers and I would welcome any opportunity to interview with you. Thank you for your consideration.

Sincerely,

Michael Migiel-Schwartz

## MICHAEL MIGIEL-SCHWARTZ

P.O. Box 123, Slaterville Springs, New York 14881 ♦ (347) 403-4691 ♦ mmigielschwartz@jd22.law.harvard.edu

<b>EDUCATION</b>	<b>HARVARD LAW SCHOOL</b> , Cambridge, MA	2019 - 2022
	Candidate for J.D., May 2022 Activities: <i>Harvard Civil Rights-Civil Liberties Law Rev.</i> , Vol. 57, Lead Outside Articles Editor <i>Harvard Civil Rights-Civil Liberties Law Rev.</i> , Vol. 56, Exec. Technical Editor <i>OnLabor</i> , Contributor Harvard Law School Labor and Employment Action Project	
	<b>WESLEYAN UNIVERSITY</b> , Middletown, CT	2010 - 2014
	B.A. with High Honors in College of Social Studies and Hispanic Literatures and Cultures Honors: Phi Beta Kappa Joan Miller Prize (for most outstanding thesis in College of Social Studies) High Distinction on College of Social Studies' Comprehensive Examinations Activities: Student Labor Action Coalition; Varsity Baseball	
<b>EXPERIENCE</b>	<b>PUBLIC CITIZEN LITIGATION GROUP</b> , Washington, DC	2022 - 2023
	<i>Supreme Court Assistance Project Fellow</i> – Will coordinate assistance to lawyers with public-interest cases before the U.S. Supreme Court, including helping with petitions for certiorari or briefs in opposition, briefing on the merits, and preparation for oral argument. Will also assist on other Litigation Group cases at all levels of the federal courts.	
	<b>ALTSHULER BERZON LLP</b> , San Francisco, CA	Summer 2021
	<i>Summer Associate</i> – Conducted research and drafted memos in support of grievance arbitration and unfair labor practice charges filed with the NLRB. Drafted confidential position statement on relevant NLRB retaliation case law. Drafted direct examinations for arbitrations. Researched, wrote memos, and drafted a brief insert on pertinent Sixth Circuit Rule 23 case law.	
	<b>GLADSTEIN, REIF &amp; MEGINNISS, LLP</b> , New York, NY	Summer - Fall 2020
	<i>Law Fellow</i> – Position awarded via Peggy Browning Fellowship. Conducted research and wrote legal memos related to wage-and-hour and other lawsuits in federal and state court. Advised union clients on federal agency guidance on COVID-19 and on workers' rights under federal and state disability law. Drafted bench memoranda and a brief.	
	<b>CHANGE TO WIN LABOR FEDERATION</b> , New York, NY	2014 - 2019
	<i>Strategic Research Analyst I (2014-17); Strategic Research Analyst II (2017-19)</i> – Conducted research in support of SEIU's "Fight for \$15" campaign. Researched corporate and industry performance and trends. Documented corporate wrongdoing using numerous research methods, both desk- and field-based. Developed and conducted surveys of workers and consumers, collaborating with organizers and communicators. Synthesized research in memos, white papers, and other written materials used to deliver critique of companies' employment, franchising, and corporate governance practices to the public, advocates, regulators, and politicians.	
<b>SERVICE</b>	<b>TELLURIDE ASSOCIATION</b> , Ithaca, NY	2015 - Present
	<i>Director</i> – Elected to the Board after demonstrating potential for leadership and service. Manage TA's endowment and programs for college and high school students. Select participants for and oversee the Association's summer programs for high school sophomores and juniors.	
	<b>CWA 32035, CHANGE TO WIN STAFF UNION</b> , New York, NY	2017 - 2019
	<i>Unit Chair</i> – Elected to preside over bargaining unit meetings and to serve as liaison between non-managerial staff and CWA union representatives. Aided staff in filing grievances and handling relationships with managers. Led contract negotiations in 2018, securing several victories including increased paid time off and implementation of a harassment policy.	
<b>LANGUAGES</b>	English, Spanish (professional fluency)	

Harvard Law School

Record of: Michael Benjamin Migiel-Schwartz  
Current Program Status: JD Candidate

Date of Issue: January 27, 2022  
Not valid unless signed and sealed  
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JD Program				2809	Forced Arbitration	H	2
Fall 2019 Term: August 27 - December 18				2234	Gupta, Deepak		
1000	Civil Procedure 7	H	4	2319	Taxation	H	4
1001	Spencer, Benjamin				Warren, Alvin		
1001	Contracts 7	H	4		Theories About Law	H	2
	Rakoff, Todd				Sargentich, Lewis		
1006	First Year Legal Research and Writing 7B	H	2		Fall 2020 Total Credits: 12		
1003	Elinson, Gregory	H	4	2426	Appellate Courts and Advocacy Workshop	H	2
1004	Legislation and Regulation 7	H	4		Wolfman, Brian		
	Davies, Susan				Winter 2021 Total Credits: 2		
1004	Property 7	H	4		Spring 2021 Term: January 25 - May 14		
	Smith, Henry				Antitrust Law & Economics - Global	P	5
Fall 2019 Total Credits: 18				2099	Elhauge, Einer		
Winter 2020 Term: January 06 - January 24				2846	Labor & Employment Lab	H	2
1057	Financial Analysis and Business Valuation	CR	3	2142	Sachs, Benjamin		
	Coates, John			7008W	Labor Law	H	4
Winter 2020 Total Credits: 3					Sachs, Benjamin		
Spring 2020 Term: January 27 - May 15					Writing in Conjunction with Appellate Courts and Advocacy Workshop	H	1
Due to the serious and unanticipated disruptions associated with the outbreak of the COVID19 health crisis, all spring 2020 HLS academic offerings were graded on a mandatory CR/F (Credit/Fail) basis.					Wolfman, Brian		
					Spring 2021 Total Credits: 12		
					Total 2020-2021 Credits: 26		
1024	Constitutional Law 7	CR	4	2000	Fall 2021 Term: September 01 - December 03		
	Fallon, Richard				Administrative Law	H	4
1002	Criminal Law 7	CR	4	2231	Freeman, Jody		
2069	Employment Law	CR	4	2035	Advanced Legislation: Statutory Interpretation	H	2
	Sachs, Benjamin				Rabb, Intisar		
1006	First Year Legal Research and Writing 7B	CR	2	3108	Constitutional Law: First Amendment	P	4
	Elinson, Gregory				Weinrib, Laura		
1005	Torts 7	CR	4		The Supreme Court as a Lawmaking Institution	H	2
	Gersen, Jacob				Fallon, Richard		
Spring 2020 Total Credits: 18					Fall 2021 Total Credits: 12		
Total 2019-2020 Credits: 39					Winter 2022 Term: January 04 - January 21		
Fall 2020 Term: September 01 - December 31				2169	Legal Profession: Government Ethics - Scandal and Reform	~	3
2048	Corporations	H	4		Rizzi, Robert		
	Fried, Jesse				Winter 2022 Total Credits: 3		

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continued on next page

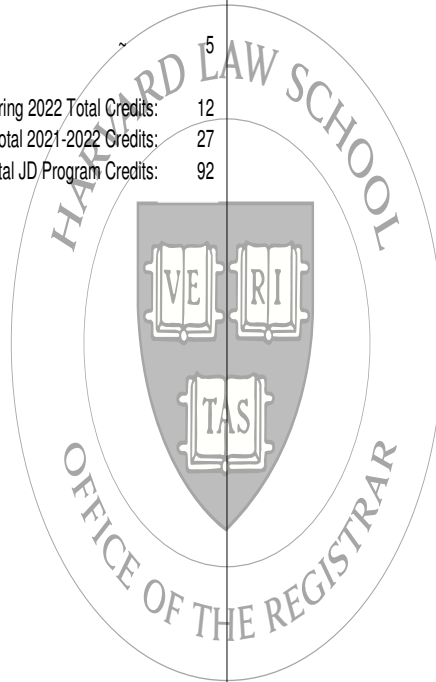
  
Assistant Dean and Registrar

Harvard Law School

Record of: Michael Benjamin Migiel-Schwartz

Date of Issue: January 27, 2022  
Not valid unless signed and sealed  
Page 2 / 2

Spring 2022 Term: February 01 - April 22			
8012	Employment Law Clinic	~	3
	Churchill, Steve		
2071	Employment Law Workshop: Strategies for Social Change	~	2
	Churchill, Steve		
2079	Evidence	~	2
	Rubin, Peter		
2086	Federal Courts and the Federal System	~	5
	Fallon, Richard		
Spring 2022 Total Credits:			12
Total 2021-2022 Credits:			27
Total JD Program Credits:			92
End of official record			



*Michael B Migiel-Schwartz*  
Assistant Dean and Registrar

**HARVARD LAW SCHOOL**  
Office of the Registrar  
1585 Massachusetts Avenue  
Cambridge, Massachusetts 02138  
(617) 495-4612  
[www.law.harvard.edu](http://www.law.harvard.edu)  
[registrar@law.harvard.edu](mailto:registrar@law.harvard.edu)

Transcript questions should be referred to the Registrar.

In accordance with the Family Educational Rights and Privacy Act of 1974, information from this transcript may not be released to a third party without the written consent of the current or former student.

A student is in good academic standing unless otherwise indicated.

#### Accreditation

Harvard Law School is accredited by the American Bar Association and has been accredited continuously since 1923.

#### Degrees Offered

J.D. (Juris Doctor)  
LL.M. (Master of Laws)  
S.J.D. (Doctor of Juridical Science)

#### Current Grading System

**Fall 2008 – Present:** Honors (H), Pass (P), Low Pass (LP), Fail (F), Withdrawn (WD), Credit (CR), Extension (EXT)

All reading groups and independent clinicals, and a few specially approved courses, are graded on a Credit/Fail basis. All work done at foreign institutions as part of the Law School's study abroad programs is reflected on the transcript on a Credit/Fail basis. Courses taken through cross-registration with other Harvard schools, MIT, or Tufts Fletcher School of Law and Diplomacy are graded using the grade scale of the visited school.

**Dean's Scholar Prize (\*):** Awarded for extraordinary work to the top students in classes with law student enrollment of seven or more.

#### Rules for Determining Honors for the JD Program

*Latin honors are not awarded in connection with the LL.M. and S.J.D. degrees.*

#### May 2011 - Present

<i>Summa cum laude</i>	To a student who achieves a prescribed average as described in the <u>Handbook of Academic Policies</u> or to the top student in the class
<i>Magna cum laude</i>	Next 10% of the total class following <i>summa</i> recipient(s)
<i>Cum laude</i>	Next 30% of the total class following <i>summa</i> and <i>magna</i> recipients

All graduates who are tied at the margin of a required percentage for honors will be deemed to have achieved the required percentage. Those who graduate in November or March will be granted honors to the extent that students with the same averages received honors the previous May.

#### Prior Grading Systems

**Prior to 1969:** 80 and above (A+), 77-79 (A), 74-76 (A-), 71-73 (B+), 68-70 (B), 65-67 (B-), 60-64 (C), 55-59 (D), below 55 (F)

**1969 to Spring 2009:** A+ (8), A (7), A- (6), B+ (5), B (4), B- (3), C (2), D (1), F (0) and P (Pass) in Pass/Fail classes

#### Prior Ranking System and Rules for Determining Honors for the JD Program

*Latin honors are not awarded in connection with the LL.M. and S.J.D. degrees.*

Prior to 1961, Harvard Law School ranked its students on the basis of their respective averages. From 1961 through 1967, ranking was given only to those students who attained an average of 72 or better for honors purposes. Since 1967, Harvard Law School does not rank students.

<u>1969 to June 1998</u>	<u>General Average</u>
<i>Summa cum laude</i>	7.20 and above
<i>Magna cum laude</i>	5.80 to 7.199
<i>Cum laude</i>	4.85 to 5.799

#### June 1999 to May 2010

<i>Summa cum laude</i>	General Average of 7.20 and above (exception: <i>summa cum laude</i> for Class of 2010 awarded to top 1% of class)
<i>Magna cum laude</i>	Next 10% of the total class following <i>summa</i> recipients
<i>Cum laude</i>	Next 30% of the total class following <i>summa</i> and <i>magna</i> recipients

#### Prior Degrees and Certificates

LL.B. (Bachelor of Laws) awarded prior to 1969.

The I.T.P. Certificate (not a degree) was awarded for successful completion of the one-year International Tax Program (discontinued in 2004).

  
Assistant Dean and Registrar

**WESLEYAN UNIVERSITY  
MIDDLETOWN, CONNECTICUT**

Page 1 of 1

**ACADEMIC TRANSCRIPT OF:****Michael Benjamin Migiel-Schwartz**

PO Box 123  
36 Creamery Road  
Slaterville Springs NY 14881

**Class:** 2014  
**Major(s):** College of Social Studies  
Hispanic Literatures and Cultures  
**Student Type:** Undergraduate

**WesID:** 882683**Day of Birth:** August 15

<u>Course</u>	<u>Title</u>	<u>Credit</u>	<u>Grade</u>	<u>Course</u>	<u>Title</u>	<u>Credit</u>	<u>Grade</u>
<b>Pre-Matric 2010</b>				<b>Fall 2012</b>			
Advanced Placement				Non-Resident Study:			
BIOL	Biology	1.00	CR	CIEE: Buenos Aires, Argentina			
<b>Fall 2010</b>				GOVT	International Relations Lat Am	0.50	A-
ECON101	Introduction to Economics	1.00	A	HIST	Argentine Social History	1.50	A-
GOVT159	The Moral Basis of Politics	1.00	A	SPAN	20th Cen Argentina Through Lit	1.00	A
HIST142	The History of Poverty	1.00	A	SPAN	Argentine Fiction Workshop	1.00	A
SPAN112	Intermediate Spanish II	1.00	A-	<b>Spring 2013</b>			
<b>Spring 2011</b>				CSS330	Jr. Tut: Intl. Econ. Relations	1.00	A
AMST275	Intro to Afam Literature	1.00	A-	CSS340	Jr Tut: Relig., Secularism &	1.00	A
ECON213	Economics of Wealth & Poverty	1.00	A	CSS371	Jr Col:Soc. & Political Theory	1.00	A
HIST107	Laughter and Politics	1.00	A	GOVT402	Individual Tutorial, Undergrad	1.00	CR
SPAN221	Introduction to Hispanic Lit.	1.00	A	SPAN236	Cervantes	1.00	A
<b>Fall 2011</b>				<b>Fall 2013</b>			
College of Social Studies (Soph Year)				CSS391	Sr Col: Political Economy	1.00	A
CSS220	Soph Tut: Hist. Econ Thought	1.50	CR	CSS409	Senior Thesis Tutorial	1.00	A
CSS271	Soph Col: Modern Social Theory	1.00	CR	CSS491	Teaching Apprentice Tutorial	1.00	CR
E&ES197	Intro to Env Studies	1.00	CR	QAC201	Applied Data Analysis	1.00	A
SPAN226	Spanish American Lit & Civil	1.00	CR	<b>Spring 2014</b>			
<b>Spring 2012</b>				CSS410	Senior Thesis Tutorial	1.00	A
CSS230	Soph Tut: State and Society	1.50	CR	PHED118	Strength Training, Intro	0.25	CR
CSS240	Soph Tut: Emerg. Mod. Europe	1.50	CR	RUSS252	Tolstoy	1.00	A-
MB&B111	Intro to Envir Toxicology	1.00	CR	SPAN258	The Intercultural Stage	1.00	B+
SPAN271	Intellectuals Cultural Politic	1.00	CR	Dean's List - Fall 2010			
Sophomore Comprehensive Examination				Dean's List - Spring 2011			
<b>High Distinction</b>				Dean's List - Spring 2013			
Sophomore Comprehensive Examiners				Dean's List - Fall 2013			
Thomas Miceli Economics				High Honors College of Social Studies			
Asya El-Meehy Government				Phi Beta Kappa-Spring			
Kevin Goldberg History				<b>Bachelor of Arts Degree - May 25, 2014</b>			
Lida Maxwell Social Theory				Total Credits: 34.75			
				Date Printed: September 11, 2018			

---- End of Academic Transcript ----

# WESLEYAN UNIVERSITY

College of Social Studies  
238 Church Street  
Middletown, CT 06459  
860 685-2240 Fax: 860 685-2241

## **The College of Social Studies (CSS)** **Transcript Letter**

The College of Social Studies (CSS) is a rigorous, multidisciplinary major focusing on History, Government, Political and Social Theory, and Economics. Founded in 1959, the CSS is reading and writing intensive, encouraging intellectual independence with weekly essays, small group Tutorials, and a vibrant intellectual environment. After applying to the CSS during their Freshman year, students begin the Sophomore year with intensive Tutorials in History, Government, and Economics along with a Social Theory Colloquium. In order to allow students to focus their energies and develop a faculty for independent analysis, there are no grades awarded during this year, and grades for all classes (both inside and outside CSS) are converted to **CREDIT**. At the end of the sophomore year, students participate in Comprehensive Examinations administered by Examiners from outside Wesleyan. These Exams consist of a week-long series of written essays in each subject area, and an Oral Examination. Each student receives a grade of High Distinction, Distinction, Commendable, Satisfactory, or Fail with the modal grade being Commendable.

**For the Sophomore year, only the result of the Comprehensive Examination appears on the student's transcript: subsequent courses in the Junior and Senior years are graded in the conventional manner.**

After the Sophomore year, CSS students take classes that build from the original Tutorials and Colloquium by evaluating theories and exploring their application to historical test cases and contemporary debates. During their Junior year, students participate in a Colloquium on Contemporary Philosophy, as well as small group Tutorials in two of the three other subject areas of their choice. These Tutorials either follow the same weekly system of the Sophomore year or culminate in an extensive term paper. During the first semester of their Senior year, students participate in a multidisciplinary Colloquium which examines debates and issues in contemporary social, economic, and political theory. The rest of Senior year is devoted to a Senior project, either a Senior Essay or an Honors Thesis.

**The transcripts of CSS students show neither a GPA, nor a class rank; the lack of Sophomore grades would make rankings misleading.**

Having spent three years reading and learning in an intimate intellectual environment, CSS students are able to construct their own arguments independently, and to make original contributions to their fields of choice.

February 2018

WESLEYAN.EDU

April 11, 2022

The Honorable Lewis Liman  
Daniel Patrick Moynihan United States Courthouse  
500 Pearl Street, Room 701  
New York, NY 10007-1312

Dear Judge Liman:

I write on behalf of Michael Migiel-Schwartz, a rising third-year student at Harvard Law School, who has applied for a clerkship in your chambers. Over the last two years, I have had the pleasure of teaching Mr. Migiel-Schwartz in four of my courses. He is an exceedingly strong student who would make a completely outstanding law clerk. I recommend him very highly.

I first met Mr. Migiel-Schwartz when he was a student in my 1L reading group, *The Struggle for Workers' Rights on Film*. This course is a relatively informal small-group class taught in the early months of a student's time at the law school. My course uses a series of movies to explore basic themes in labor movement history and labor law. Mr. Migiel-Schwartz came to the course with extensive experience in the labor movement, having worked for several years as a researcher with the Change to Win union federation. Several things were immediately apparent to me about Mr. Migiel-Schwartz. One, he was a serious and careful thinker who was able to consistently make contributions to class debates that moved the discussion forward. Two, Mr. Migiel-Schwartz was able to draw on his previous work experience in ways that deepened his insights into the course material while not in any way leaving him closed off to new ideas or ways of thinking. Three, Mr. Migiel-Schwartz was committed to using his legal education – and his future career as a lawyer – to advance the rights and interests of those who most need law's protection. Four, Mr. Migiel-Schwartz is a pleasure to have in class. He combines significant legal and intellectual talent with a genuine humility and respect for his peers – a combination that can be rare but that is invaluable.

During the Spring 2020 semester, Mr. Migiel-Schwartz was a student in my Employment Law class. Employment Law is a large, black-letter law class taught in the Socratic style. When Mr. Migiel-Schwartz took Employment Law there were approximately 100 students in the class, and although he was still a 1L at the time, Mr. Migiel-Schwartz was among the strongest students in the class. Exams during the Spring 2020 semester were graded Pass/Fail due to the COVID-19 pandemic, and I take seriously our commitment to adhering to this grading scale. But, suffice it to say, Mr. Migiel-Schwartz' exam was terrific. It displayed a total mastery of the material, a superb ability to draw connections between different areas of doctrine, and a strong ability to think creatively about legal arguments and policy questions alike. Mr. Migiel-Schwartz also was a strong participant in class, always rigorously prepared, and able to answer all the questions I put to him with sophistication and depth.

This past semester, Mr. Migiel-Schwartz was a student in my Labor Law class. Labor Law is another four-unit, mainly black-letter course and there were 93 students in the class last semester. Mr. Migiel-Schwartz had a highly successful semester in Labor Law. His exam was, again, superb, this time earning him an H grade for the course. Mr. Migiel-Schwartz' class participation was also outstanding, reflecting the same combination of intelligence, insight and humility that I saw in the reading group. I remember in particular Mr. Migiel-Schwartz' comments on the Republic Aviation case, when he offered important insights about the ways in which legal protections for union organizing activity (or the lack thereof) have important symbolic effects, effects which have quite tangible implications for the success and failure of unionization efforts. Mr. Migiel-Schwartz also presented an incredibly sophisticated analysis of the NLRB General Counsel's EZ Industrial Solutions memorandum which involves the question of NLRA protection for political protest activity. Finally, Mr. Migiel-Schwartz was willing to take positions that were not entirely in line with the majority views of the class. One example of this came during our debate over so-called "employee participation plans" and the Crown Cork case, which Mr. Migiel-Schwartz was willing to defend – and to defend with sophisticated argumentation – despite the skepticism shown by the rest of the class. He deserves enormous credit for this.

Mr. Migiel-Schwartz was also a student in the Labor and Employment Lab last semester. The Lab is a small, fifteen student, seminar-style course in which students collaboratively develop, write and edit short-form pieces of writing for the OnLabor blog. Mr. Migiel-Schwartz was an absolute star in the Lab. He wrote four outstanding pieces for the blog: on just-cause employment protections, on OIRA and its relationship to workplace protections, on the Federal Arbitration Act and its applicability to Amazon delivery drivers, and on criminal prosecution of wage theft cases. The pieces are all carefully researched and written in a clear and highly accessible style, and have all received wide readership – reflecting their relevance and quality. Mr. Migiel-Schwartz also was an outstanding participant in Lab discussions, offering excellent and constructive criticism to his peers and demonstrating an admirable ability to listen to and learn from criticism of his own writing.

Finally, I have had the opportunity to get to know Mr. Migiel-Schwartz through his regular visits to office hours and through some career advising. He combines his serious legal and intellectual talents with a genuine humility and understated personality that is refreshing. This combination of traits, I am confident, will make Mr. Migiel-Schwartz an outstanding law clerk and an absolutely welcome addition to any chambers. He has my highest recommendation.

Thank you for your attention to Mr. Migiel-Schwartz' application. I would be happy to discuss it further.

Sincerely,

Benjamin Sachs - bsachs@law.harvard.edu - 617-894-9058

Benjamin Sachs

Benjamin Sachs - bsachs@law.harvard.edu - 617-894-9058

April 11, 2022

The Honorable Lewis Liman  
Daniel Patrick Moynihan United States Courthouse  
500 Pearl Street, Room 701  
New York, NY 10007-1312

Dear Judge Liman:

I write to encourage you, most strongly, to consider Michael Migiel-Schwartz for a clerkship in your chambers. I have been lucky, in ten years of teaching, to have encountered many strong minds and eager spirits — but Michael is among the best. He has an unusual maturity, both professionally and personally, combined with an indefatigable work ethic and an agile mind. He takes the law very seriously, and is endlessly interested in engaging on how judges make decisions, how the caselaw develops and changes, and how litigation molds our societal structures. But he does not take himself too seriously: he is grateful for the opportunities he has had, hopeful of learning and assisting a judge charged with the awesome and interesting responsibilities of the federal bench, and ready to put his skills to use for the public good. Just as importantly, he has a wry and infectious sense of humor, and he is one of the best writers I have seen at Harvard.

I met Michael on his first day of law school, in “Legislation and Regulation,” a required 1L course that deals with statutory interpretation and the basics of administrative law, with a strong focus on how courts address the output of legislatures and regulatory agencies. These are unfamiliar issues for most new law students, and they require re-thinking what “reading and writing” mean when one is a lawyer, but Michael took to the concepts and the challenges immediately.

Michael came to Harvard after five years in the working world, devoting his efforts to union work, largely as a researcher and analyst. That experience has been important in his academic success at Harvard, for he treats his academic endeavors like a job: He prepares ahead of time, is ready to perform in class, follows up on what needs to get a little more attention, and generally lives the schedule of a mature adult with obligations, rather than a college student whose day begins five minutes before the first class and whose semester ends with frantic cramming for exams. He also knows that he cares deeply about worker-side issues, and he almost certainly will find his life’s work in that arena. But that self-knowledge does not mean that he has a narrow view of either the problems or the joys of the law — quite the contrary. As I got to know him over the course of the term, inside and outside the classroom, it became abundantly clear that he has a real thirst for understanding the processes of legal advocacy and of judicial decision-making, as important enterprises in themselves. He was always seeking to understand the issues in our cases from a variety of viewpoints, and through the lenses of multiple doctrinal approaches.

Michael was thus a real pleasure to have in class, for he was always ready to engage in the conversation of the day, and came to each session obviously interested in the cases we read, the doctrines they described, and the implications of their holdings. He did not just have useful insights of his own; he also always listened carefully to others, and in those conversations he focused on finding common understanding, even when common ground seemed unlikely. His preparation and engagement, so evident in the classroom, was also reflected in his final exam, in which he displayed the same understanding of the issues and the doctrines we had discussed, in neatly structured and carefully crafted prose. It is not often that a three-hour take-home exam produces something that is actually a pleasure to read, but Michael’s exam was that rare thing. I also had the pleasure of reading papers, in progress and completed, that he produced in other classes, and every encounter with his written work impressed me more. His writing — clear and straightforward and compelling — reflects deep and reliable research as well as a deft understanding of what the most persuasive and useful presentation of his conclusions should be.

But Michael would not just bring academic and professional excellence to your chambers; he is also just a pleasure to be around. He is energetic, to be sure, but he is calm, and he is comfortable with himself and with others. Dedicated and meticulous in his work habits, he is also sensitive to the needs of those around him, and he clearly likes best to work with (and for) others in a common enterprise. He is quick to see the laugh, quick to help, and quick to understand. He is engaged and engaging, and would make an excellent colleague in any workplace.

I do believe you would be well-served by Michael as a clerk. He would bring many gifts to your work, and he would be a credit to the opportunity you would give him. I would be happy to answer any questions you might have, and hope that you will take the chance to meet him yourself.

With many thanks for your consideration,

Susan Davies

Joseph Story Senior Lecturer on Law  
Harvard Law School

Susan Davies - sdavies@law.harvard.edu - 617-496-6228

Richard H. Fallon, Jr.  
HARVARD LAW SCHOOL  
1545 Massachusetts Avenue  
Areeda Hall 330  
Cambridge, MA 02138

May 06, 2022

The Honorable Lewis Liman  
Daniel Patrick Moynihan United States Courthouse  
500 Pearl Street, Room 701  
New York, NY 10007-1312

Dear Judge Liman:

I write to recommend Michael Migiel-Schwartz, who has recently applied for a position as one of your law clerks. Michael has been a student in three of my classes at Harvard Law School: an introductory course on Constitutional Law during his first year, a seminar on The Supreme Court as a Lawmaking Institution in the Fall of his third year, and, most recently, my course on The Federal Courts and the Federal System. Based on that relatively broad experience, I recommend Michael with great enthusiasm.

Let me begin with the most striking, common elements in Michael's performances in my classes. He is remarkably hard-working and conscientious. When I have cold-called on Michael, I have always found him to be prepared, articulate, and thoughtful. His demeanor is conspicuously professional. When speaking in class, Michael is typically careful to note both sides of an argument. His demonstrated understanding of opposing points of view gives him special credibility when he ultimately draws conclusions.

Michael was in my Constitutional Law class in the spring of 2019, when the Covid pandemic forced a mid-semester conversion to online classes and the Law School decided to administer all exams on a Credit-Fail basis. Based on my understanding of Law School policy, I promised students that I would not discuss details of exam performance in letters of recommendation. Although subject to that constraint, I can say unequivocally that Michael's exam at the end of the course was entirely consistent with the high opinion I had formed of him in the classroom and then online.

Last Fall, I was delighted to find that Michael had enrolled in my seminar on The Supreme Court as a Lawmaking Institution. In that seminar, the students and I set out to test the hypothesis that the Supreme Court is predominantly a lawmaking institution in ways that distinguish it from other courts. In class discussion, Michael displayed acute analytical intelligence in testing arguments of all kinds. Among other intellectual and personal virtues, he is an excellent listener who often followed up on others' comments with insights that built on prior contributions to the conversation.

Grading in the seminar was based on three short papers during the semester and a final, longer paper at the end. Michael's papers were a delight to read. One assessed Ronald Dworkin's theory of interpretation, another responded to textualist and originalist interpretive theories, and the third dealt with empirical scholarship on patterns of lower-court decision-making. All of Michael's papers were clearly written and well-organized. All came to interesting conclusions in persuasive, essay-like fashion. In the final paper, Michael came to me early on to discuss a possible topic share his tentative thesis. In this experience, I found Michael to be as thoughtful as always and also eager for feedback. Based on my experience with Michael in the seminar, I would describe him as an excellent legal and analytical writer.

Although we are still in mid-semester in my Federal Courts course, Michael's performance to date is exactly what I would have expected. He is always well prepared and notably measured and articulate.

Michael's transcript – which consists almost entirely of Honors grades – provides strong corroboration of my very favorable assessment. His c.v. similarly demonstrates his energetic participation in student organizations and journals, including in leadership positions on the *Harvard Civil Rights-Civil Liberties Law Review*.

Overall, taking account of everything that I know, I would expect Michael to be an excellent law clerk, and I recommend him accordingly.

If I could possibly provide any further information, please do not hesitate to contact me.  
Sincerely,

Richard Fallon  
*Story Professor of Law*

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**WRITING SAMPLE**

Drafted Spring 2021

The attached is an excerpt from a brief that I wrote for Professor Brian Wolfman's Appellate Courts and Advocacy Workshop. Professor Wolfman provided us with a Joint Appendix, 11 cases, and various statutes and regulations. No outside research was permitted. I was assigned to draft the appellants' brief, and I edited the attached only slightly after meeting with Professor Wolfman to discuss my initial draft.

## INTRODUCTION

On August 25, 1995, Beverly Liu and Lucinda Wong, both Asian Americans, boarded Delta Flight 824 with their respective children, Dan and Sid Liu, and Sam and Chris Wong (“Plaintiffs”). Unfortunately, also boarding the flight were Roger Train, Leslie Train, and James George. These individuals were part of a group that was drinking prior to and during the flight. Frustrated that Ms. Liu asked flight attendants to quiet their boisterous group, they harassed Ms. Liu and her companions with racial epithets and insinuated that they would shoot her. Plaintiffs were so frightened that they wanted security to accompany them leaving the plane.

Defendant Delta Airlines and its employees created this hostile environment. Despite Ms. Liu notifying the flight attendants that the Trains and Mr. George were intoxicated, the flight attendants served them alcohol. Beyond briefly reprimanding the group for cursing at Ms. Liu, the flight attendants failed to take serious action. They refused to call security, although they knew about the threats and racial slurs and knew that Plaintiffs were frightened to leave in their harassers’ presence.

Plaintiffs sued Delta. The district court held that the Airline Deregulation Act (ADA) preempted Plaintiffs’ state-law tort claims, relying on a Ninth Circuit 2-1 opinion that misunderstands the relevant Supreme Court precedent, and that contradicts the two other circuits that have considered whether the ADA preempts personal injury tort claims. In passing the ADA, Congress intended to preempt the very economic regulation the ADA had undone, not personal injury tort law.

This case raises grave safety concerns. Affirming the district court’s holding would mean the ADA permits airlines to create hostile environments for minority customers and not face liability because those claims “relate to” the airlines’ “services.” The holding would also bar

claims regarding an airline's wrongful conduct that leads to a passenger's death or serious injury. As explained below, Congress did not intend that result and the Supreme Court's precedent does not require it.

### **JURISDICTIONAL STATEMENT**

The district court had subject-matter jurisdiction over Plaintiffs' claims under 28 U.S.C. § 1441. J.A. 35. The district court entered its final judgment granting Defendant's motion for summary judgment and dismissing Plaintiffs' claims on October 30, 1996, which disposed of all claims of all parties. *Id.* at 40–41. Plaintiffs timely filed a notice of appeal under Federal Rule of Appellate Procedure 4(a)(1)(A) on November 7, 1996. *Id.* at 41. This Court has jurisdiction under 28 U.S.C. § 1291.

### **STATEMENT OF THE ISSUE**

Does § 1305(a) of the Airline Deregulation Act preempt state tort law claims for personal injuries suffered due to wrongful conduct of air carriers, including claims alleging that an air carrier permitted racist and physical intimidation of its passengers?

### **STATEMENT OF THE CASE**

#### **I. Legal Background**

Prior to 1978, the Federal Aviation Act empowered the Civil Aeronautics Board to regulate the interstate airline industry, particularly to “regulate interstate airfares and to take administrative action against certain deceptive trade practices.” *Morales v. Trans World Airlines*, 112 S.Ct. 2031, 2034 (1992). In 1978 Congress, “determining that ‘maximum reliance on competitive market forces’ would best further ‘efficiency, innovation, and low prices’” passed the Airline Deregulation Act (ADA), withdrawing these regulatory powers. *Id.* To ensure that states would not undo federal deregulation with regulation of their own, the ADA prohibits states

from “enact[ing] or enforc[ing] any law... relating to [air carrier] rates, routes, or services.” 49 U.S.C. § 1305(a)(1). The Supreme Court has twice considered the scope of this preemption provision.

In *Morales*, the Supreme Court concluded that the “relating to” language in the ADA preempts “[s]tate enforcement actions having a connection with or reference to airline ‘rates, routes or services.’” *Morales*, 112 S.Ct. at 2037. The Court found that guidelines addressing airfare advertising and enforceable through states’ consumer protection laws clearly “related to” airline rates. *Id.* at 2039. This was because the guidelines specifically referred to airfares, even if the consumer protection laws did not. *Id.* Alternatively, even if the guidelines referred to airfare *advertising* rather than the airfares themselves, they would be preempted because restrictions on advertising would “have the forbidden significant [economic] effect upon fares.” *Id.* Despite this broad reading of the “relating to” language, the Court recognized that ADA preemption was not boundless: “‘some state actions may affect airline fares in too tenuous, remote, or peripheral a manner’ to have preemptive effect.” *Id.* at 2040.

The Supreme Court next examined the ADA’s preemption clause in *American Airlines, Inc. v. Wolens*, in which members of a frequent flier program challenged certain program modifications as violations of the Illinois Consumer Fraud Act and as a breach of contract. 115 S.Ct. 817, 822 (1995). As in *Morales*, the Court found that the plaintiffs’ claims “related to” “rates.” *Id.* at 823. However, the Court held that while the ADA preempted the claims under the Illinois statute, the breach-of-contract claims were not preempted because a state does not “enact or enforce any law” by enforcing private agreements. *See id.* at 826. State contract-law claims were not preempted because rather than “imposing... substantive standards” on rates, routes, or services as the ADA forbids, they apply neutral, background, common law rules. *See id.*

*Morales* and *Wolens* thus impose two distinct requirements for ADA preemption: “(1) A state must ‘enact or enforce’ a law that (2) ‘relates to’ airline rates, routes, or services, either by expressly referring to them or by having a significant economic effect upon them.” *Travel All Over the World, Inc. v. Kingdom of Saudi Arabia*, 73 F.3d 1423, 1432 (7th Cir. 1996). Since *Morales* and *Wolens*, three circuits have considered whether the ADA preempts personal injury claims. Two have concluded that it generally does not. *See Travel*, 73 F.3d at 1433 (“Only those tort claims that refer to or have a connection with airline rates, routes, or services can be preempted by the ADA.”); *see also Smith v. America West Airlines*, 44 F.3d 344, 346 (5th Cir. 1995) (“Neither the language nor history of the ADA implies that Congress was attempting to displace state personal injury tort law concerning the safety of the airline business.”). The Ninth Circuit, in a 2-1 opinion, however, concluded that “*Wolens* only excluded private contract terms from the wide scope of [ADA] preemption,” thus determining that § 1305(a)(1) preempts tort claims. *See Harris v. American Airlines, Inc.*, 55 F.3d 1472, 1477 (9th Cir. 1995).

## II. Factual Background

On August 25, 1995, Plaintiffs Beverly Liu and Lucinda Wong, both Asian Americans, boarded Delta Flight 824 with their respective children, Dan and Sid Liu, and Sam and Chris Wong. J.A. 25. Also on the flight were Roger Train, Leslie Train, and James George (the “Train group”), who were traveling with a larger group, some of whom had been drinking at a bar in the waiting area before boarding. *Id.* at 26. Ms. Liu identified Mr. George and Mr. Train as obviously intoxicated immediately after they boarded. *Id.* at 29. Plaintiffs and the Train group were seated within rows of each other, and the Train group was loud and disruptive prior to entering the aircraft, upon takeoff, and during the flight. *Id.*

During takeoff, Ms. Liu asked the Train group to quiet down. *Id.* This had no effect, so minutes after takeoff she informed a flight attendant, Michael John, that the noise was frightening the children and, due to the stress, her niece and nephew were having difficulty breathing. *Id.* at 26, 30. Although another flight attendant informed the group that they were so loud that the noise could be heard “all the way to the front,” no further action was taken at that time. *Id.* at 30.

Ms. Liu was not alone in questioning whether the Train group’s drinking was an issue. Mr. John informed his supervising flight attendant, Cathy Sikes, that the rowdiness might pose problems and asked whether he should serve alcohol to the Train group. *Id.* at 26. Ms. Sikes instructed Mr. John to serve them one beer and to pour a splash of water into their mixed drinks. *Id.*

As Mr. John went down the aisle with the group’s drinks, Ms. Liu asked him not to serve the group because they were obviously intoxicated. *Id.* at 26, 30–31. Though notified that the group was already inebriated, Mr. John did not seek further instruction from Ms. Sikes and served the Train group the alcohol. *Id.* at 26–27.

Things escalated when, the noise continuing, Ms. Liu again asked that the flight attendants quiet the Train group. *Id.* at 27. The Train group took notice. *Id.* They proceeded to insult, harass, and threaten Plaintiffs, including with racial epithets. Mr. Train called Ms. Liu and her family “gooks,” “bitches,” and “whores.” *Id.* at 31. At one point, Ms. Train left her seat, stood in the aisle in front of Plaintiffs, and took a photograph. *Id.* at 27. Ms. Liu believed the photograph was of her and rang again for the flight attendants. *Id.* Roger Train told Ms. Liu that she was scared to have her picture taken because her “green card must have expired,” and that she and her family “should go back to China.” *Id.* at 30. One man pantomimed pointing a gun at

Ms. Liu, making a shooting motion. *Id.* Following these events, Ms. Sikes finally responded to Ms. Liu's ring for service and scolded a member of the Train group for cursing at Ms. Liu, temporarily calming the situation. *Id.* at 27.

As the plane prepared to land, however, harassment resumed. Ms. Liu overheard Mr. Train say that the group was going to lie in wait for Plaintiffs and was going to "get [them]." *Id.* at 31. Ms. Liu informed a flight attendant about the threats and the racial slurs and asked for them to arrange security. *Id.* Despite this, flight attendants encouraged Plaintiffs to exit the aircraft before the Train group left. *Id.*

Fortunately for Plaintiffs, a friend called 911 and airport security. *Id.* at 31. Police arrived and asked Ms. Liu to identify the people harassing her. *Id.* at 27. She identified Mr. and Ms. Train and Mr. George and informed the police that the three had harassed Plaintiffs with racial epithets. *Id.*

Ms. Liu filed a complaint with the Federal Aviation Administration. *Id.* FAA regulations prohibit airlines from boarding passengers who appear intoxicated and from serving alcohol to passengers who appear intoxicated. 14 C.F.R. § 121.575(c),(b)(1) (1996). The FAA determined there was insufficient evidence of noncompliance and closed the investigations. J.A. 27–28.

Plaintiffs sued Delta in state court, alleging five causes of action: negligence *per se* for violation of federal regulations, intentional infliction of emotional distress, negligent infliction of emotional distress, negligence, and negligent training and supervision. *Id.* at 12–18. Delta removed the action to federal court on diversity grounds and moved for summary judgment. *Id.* at 35.

The district court determined that the action presented no genuine or disputed issue of material fact, and entered its ruling that Delta was entitled to summary judgment as a matter of

law on October 30, 1996. *Id.* at 36, 40–41. The district court held that the ADA preempts Plaintiffs’ state-law claims against Delta. *Id.* at 36–40. Relying almost exclusively on the Ninth Circuit’s decision in *Harris*, the district court rejected the argument that *Wolens* had narrowed the preemptive scope of § 1305(a)(1) through that case’s reading of the statute’s “enact or enforce” language, determining that “*Wolens* only excluded private contract terms” from the ADA’s scope of preemption. *Id.* at 39. Furthermore, the district court reasoned that because Plaintiffs’ state-law claims “directly pertain to Delta’s treatment of its passengers,” their claims “relate to” Defendant’s “services” and are preempted under *Morales*. *Id.* at 38.

### III. Standard of Review

This Court reviews a grant of summary judgment *de novo*. *Frank v. Lindsay*, 816 F.2d 121, 123 (6th Cir. 1987). Summary judgment is properly granted when viewing the evidence most favorable to the non-moving party the movant is clearly entitled to prevail as a matter of law. Fed. R. Civ. P. 56; *Celotex Corp. v. Catrett*, 477 U.S. 317, 322–23 (1986). This Court must therefore regard as true Plaintiffs’ evidence, if supported by affidavits or other evidentiary material, and must draw all reasonable inferences in Plaintiffs’ favor. *See Celotex*, 477 U.S. at 324.

## SUMMARY OF ARGUMENT

The Supreme Court’s holdings in *Wolens* and *Morales* point to two distinct prerequisites for ADA preemption: (1) A state must “enact or enforce” a law that (2) “relates to” airline rates, routes, or services, either by expressly referring to them or by having a significant economic effect upon them. Plaintiffs’ claims satisfy neither test.

I. First, personal injury tort law does not amount to a state “enacting or enforcing” a law as *Wolens* requires. Federal courts must not displace state action in fields of traditional state

regulation unless that was the clear and manifest purpose of Congress. The ADA's text, structure, and purpose show that Congress did not intend to preempt state personal injury tort law.

**A.** The Supreme Court in *Wolens* analyzed the text and structure of the ADA and concluded that the Act does not preempt breach-of-contract claims because state contract law applies neutral, background, common law rules, rather than imposing a state's own theory of competition on air carriers. That reasoning applies equally to personal injury tort claims, evidenced in part by the concurring opinions in *Wolens* that stressed as much.

**B.** The ADA's purpose, moreover, was to preempt states from enacting the kind of substantive, economic regulation that the federal government had previously engaged in and that might threaten reliance on market forces, not personal injury tort law that protects passengers against injuries caused by air carriers' wrongful conduct. This is made clear by the fact that the FAA requires air carriers to maintain insurance to cover liability they may incur for passengers' bodily injuries, death, or property damage. And the Civil Aeronautics Board—the agency implementing the ADA—understood as much, emphasizing that the ADA preempts states from regulating only those “economic factors” that go into the contractual bargain between passengers and airlines.

**II.** Second, Plaintiffs' claims do not “relate to” air carrier “services” as *Morales* requires.

**A.** The district court, emphasizing that Plaintiffs' claims address the service of drinks, misconstrued the conduct at issue. Plaintiffs allege that Defendant's conduct created a hostile environment in which Plaintiffs were subject to racial epithets, harassment, and threats. Rather than addressing contractually bargained-for and anticipated provisions of labor, Plaintiffs' claims address conduct that simply cannot be understood as part of a contractual bargain.

**B.** To the extent Plaintiffs' claims do refer to the provision of alcohol or other contractually bargained-for services, they address issues of safety and not of economics. The ADA sought to preempt the kind of economic regulation of air carriers' services that existed prior to the statute's enactment, not regulation of safety. Where, as here, tort law claims would not lead a defendant to reevaluate its competitive strategy, but instead to reevaluate its procedures for keeping passengers safe, those claims are not preempted.

**C.** Lastly, Plaintiffs' claims have no significant economic effect on services. While Plaintiffs do make claims for punitive damages and damages for mental anguish, this is not determinative. Instead, *Morales* asks whether a law exerts a "forbidden significant effect" on rates, routes, or services that is the functional equivalent of economic regulation of the same. But to the extent Plaintiffs' claims address Defendant's services, they address safety, not economics. Punitive damages only serve to further deter defendants from engaging in unsafe behavior and cannot be the functional equivalent of economic regulation of services.

Under the tests that *Wolens* and *Morales* require the ADA does not preempt Plaintiffs' claims and this Court should reverse the judgment of the district court.

## ARGUMENT

### **I. *Wolens* prohibits states from "enacting or enforcing" laws that "seek to impose their own public policies or theories of competition or regulation on the operations of an air carrier," and state personal injury tort law does no such thing.**

Federal courts should not displace "state action in fields of traditional state regulation" unless that was the "clear and manifest purpose of Congress." *New York State Conference of Blue Cross & Blue Shield Plans v. Travelers Ins. Co.*, 115 S.Ct. 1671, 1676 (1995). This principle is all the more important where, as here, Congress has failed to provide federal remedies to replace the preempted state action. *See Hodges v. Delta Airlines, Inc.*, 44 F.3d 334,

338, 338 n.8 (5th Cir. 1995). Because “pre-emption claims turn on Congress’s intent,” Courts must first examine “the text of the provision in question, and move on, as need be, to the structure and purpose of the Act.” *New York*, 115 S.Ct. at 1677. The ADA’s text, structure, and purpose show that the statute preempts states from enacting or enforcing substantive economic regulation of the airline industry, not personal injury tort law.

**A. The ADA’s text and structure show that Congress did not preempt state tort claims against air carriers.**

The ADA preempts only claims that involve a “state... enact[ing] or enforce[ing] a law, regulation, or other provision having the force and effect of law relating to [air carrier] rates routes or services.” 49 U.S.C. § 1305(a)(1). In *Wolens*, the Supreme Court placed an important limitation on the phrase “enact or enforce.” Even though the claims in *Wolens* clearly “relat[ed] to rates routes or services,” the Court held that “the ADA permits state-law-based court adjudication of routine breach-of-contract claims” because those claims do not involve a state “enact[ing] or enforce[ing] a law, regulation, or other provision having the force and effect of law.” *Wolens*, 115 S.Ct. at 826.

In doing so, the Court understood that some state “enforcement” of state-dictated (contract) law occurs in adjudication of breach-of-contract claims. *See id.* at 824 n.5. But as the Court pointed out, the Federal Aviation Act’s savings clause specifically preserves “the remedies now existing at common law or by statute.” *Id.* at 826 (quoting 49 U.S.C. § 1506). Insisting that courts read these two clauses together, the Supreme Court reasoned that the § 1305(a)(1) cannot bar all claims that relate to rates, routes, or services. *Id.* Rather, the preemption clause only “stops States from imposing their own substantive standards with respect to rates, routes, or services.” *Id.* The key requirement of the ADA’s preemption provision, therefore, is that states not “seek to impose their own public policies or theories of competition or regulation on the

operations of an air carrier.” *Id.* at 824 n.5. As *Wolens* held, state contract law is not preempted because it does not “impos[e]... substantive standards” but applies neutral, background, common law rules. *See id.* at 826.

The reasoning in *Wolens* equally applies to personal injury tort law. Just “[l]ike contract principles, the standard of ordinary care is a general background rule against which all individuals order their affairs.” *Id.* at 828 (Stevens, J. concurring in part); *see also Hodges* 44 F.3d at 341–42 (Jolly, J., concurring). While *Wolens* speculated that “[s]ome state-law principles of contract law... [might] be preempted to the extent they seek to effectuate the state’s public policies, rather than the intent of parties” personal injury tort law does not fall into this hypothetical exception. *Wolens*, 115 S.Ct. at 826 n.8. Personal injury tort law is “far more policy-neutral than [the] specific-purpose legislation” that *Wolens* preempts. *Continental Airlines v. Kiefer*, 920 S.W.2d 274, 282 (Tex. 1996). Rather than imposing substantive standards on airline services, the claims in this case—negligence per se, intentional and negligent infliction of emotional distress, negligence, and negligent training and supervision—apply background rules existing in every state. Just as *Wolens* rejected the notion that the Department of Transportation should “adjudicate[e] private contract disputes,” this Court must not “give airlines free rein to commit negligent acts subject only to the supervision of” that same agency. *Wolens*, 115 S.Ct. at 825; *id.* at 828 (Stevens, J. concurring in part). Plaintiffs should not be limited to filing a complaint with the FAA, which, unlike the judiciary, is not under a duty to adhere to these background rules or to produce cognizable standards and records explaining its reasoning.

Indeed, despite the Ninth Circuit’s position in *Harris*, all three opinions in *Wolens* indicate that the ADA does not preempt personal injury tort law claims. As the district court emphasized in justifying its decision, *Harris* concluded that “*Wolens* only excluded private

contract terms from the wide scope of [the ADA's] preemption.” *Harris*, 55 F.3d at 1477; *see also* J.A 38–39. Yet two concurring opinions in *Wolens* stressed that the ADA did not preempt personal injury tort claims. *Wolens*, 115 S.Ct. at 827 (Stevens, J., concurring in part) (“In my opinion, private tort actions based on common-law negligence... are not preempted”); *id.* at 830 (O’Connor, J., concurring in part) (“[M]y view of *Morales* does not mean that personal injury claims against airlines are always preempted”). The majority did not dispute these assertions. Rather, describing its interpretation of the ADA’s preemption clause as a “middle course” between the two concurrences, the majority noted that *even* Justice O’Connor’s extreme “all is pre-empted” position “[left] room for personal injury claims.” *Id.* at 827 n.9. Though the majority opinion was narrowly tailored to the issue before it, its relative silence regarding tort claims is not a reason for this Court to read those claims as preempted. Doing so would violate the duty to “address[] claims of pre-emption with the starting presumption that Congress does not intend to supplant state law.” *New York*, 115 S.Ct. at 1676. If this Court is to give meaning to the text of the ADA’s preemption and savings clauses and adhere to the holding of *Wolens*, it must hold that the ADA does not preempt personal injury tort law.

**B. Congress’s intent was to preempt states’ substantive, economic regulation of air carriers, not personal injury tort law.**

Preemption of personal injury tort law is also at odds with the ADA’s purpose. Congress enacted the ADA because it believed that “‘maximum reliance on competitive market forces’ would best further ‘efficiency, innovation, and low prices.’” *Morales*, 112 S.Ct. at 2034. It included the preemption provision “[t]o ensure that the States would not undo federal deregulation with regulation of their own.” *Id.* This comports with *Wolens*’ insistence that the ADA preempts only those state laws that “impos[e] [a state’s] own public policies or theories of competition or regulation on the operations of an air carrier.” *Wolens*, 115 S.Ct. at 824 n.5. Put

differently, the ADA's preemptive scope is coextensive with what occurred before 1978 and what the statute was deregulating: substantive regulation of the economics of rates, routes, and services.

Congress's intent can be gleaned by reading the ADA alongside the FAA. The FAA requires air carriers to maintain insurance that covers "amounts for which... air carriers may become liable for bodily injuries to or the death of any person, or for loss of or damage to property of others, resulting from the operation or maintenance of aircraft..." 49 U.S.C. § 1371(q)(1). This provision would be rendered superfluous if the ADA preempted passengers from bringing personal injury tort claims. *See Hodges*, 44 F.3d at 338. While the text of § 1371(q)(1) only refers to "bodily injuries... death... [or] loss of or damage to property," this does not mean that Congress only intended to preserve tort law that pertains to physical injury, death, or property loss. Rather, the requirement illustrates that Congress intended for air carriers to retain insurance that would cover the most likely—and thus most costly—areas of personal injury tort law that air carriers would confront. Had Congress intended to preempt all state interference with rates, routes, and services, it would not have required airlines to maintain such insurance.

Moreover, the agency implementing the ADA recognized that Congress did not intend to preempt personal injury tort law. The Civil Aeronautics Board's statements regarding the implementation of the ADA "strongly support the view that the ADA was concerned solely with economic deregulation, not with displacing state tort law." *Hodges*, 44 F.3d at 337. As the CAB stated, to give effect to the preemption provision's policy of "prevent[ing] State economic regulation from frustrating the benefits of decreased federal regulation," the Board concluded that the ADA's "preemption extends to all of *the economic factors* that go into the provision of

the *quid pro quo* for passenger's [sic] fare, including flight frequency and timing, liability limits, reservation and boarding practices, insurance, smoking rules, meal service, entertainment, [and] bonding and corporate financing." 44 Fed. Reg. 9948, 9949, 50 (1979) (emphasis added). The ADA bars states from enacting and enforcing economic regulation that might "chill the enthusiasm of carrier management to make competitive route and rate decisions." *Id.* at 9949. It does not bar personal injury tort claims, against which all airline carriers must order their conduct, competitive or otherwise.

**II. Plaintiffs' claims do not "relate to" services, nor do they have a "forbidden significant effect" on services, as *Morales* requires.**

For a state law to be preempted by the ADA it must also "relate[] to" airline rates, routes, or services, either by expressly referring to them or by having a significant economic effect upon them. *See Morales*, 112 S.Ct. at 2036–37, 2039. In addition to not meeting *Wolens*' "enact or enforce" test, Plaintiffs' claims do not "relate to" airlines rates, routes, or services.

**A. Plaintiffs' claims refer not to "service" of alcohol but to Defendant's broader conduct that led to Plaintiffs being harassed and threatened.**

The District Court focused too narrowly on the provision of alcohol, ignoring Defendant's broader conduct. It mistakenly perceived the question to be "whether the provision of drinks... was sufficiently 'related to' a 'service' of Flight 824 as to require preemption of Plaintiffs' claims." J.A. 38. In *Harris* the Ninth Circuit similarly held that the "allegations pertain[ed] directly to a 'service' the airlines render: the provision of drink." *Harris*, 55 F.3d at 1476. But as the dissent in *Harris* recognized, this mischaracterizes the claims "in terms of a single piece of evidence... [offered] to prove negligence." *Id.* at 1477 (Norris, J., dissenting).

In reality, Defendant did much more than serve drinks to the Train group; Defendant's broader actions created a hostile environment that is not part of the ordinary contractual services

air carriers provide. To the extent the District Court recognized this, it held that this broader conduct also constituted a “service” within the meaning of the ADA. It reasoned that Plaintiffs’ claims “directly pertain to Delta’s treatment of its passengers,” following *Harris*’s holding that claims that “pertain directly to how airlines treat passengers who are loud, boisterous, and intoxicated” also “relate to” services and are therefore preempted. J.A. 38; *see also Harris*, 55 F.3d at 1476. But this rule would be boundless: it would mean an airline could not be subject to tort suit if it chose to assault loud customers. More extreme, it “would suggest that a lawsuit following a fatal airplane crash could relate to ‘services.’” *Hodges*, 44 F.3d at 338. The Supreme Court has not defined “services” under the ADA, but clearly there must be some treatment of passengers not covered by the statute.

The better view is that “services” under the ADA include only “bargained-for or anticipated provision of labor from one party to another.” *Hodges*, 44 F.3d at 336; *see also Travel*, 73 F.3d at 1433. If courts incorporate “the element of bargain or agreement” into their understanding of “services,” this will “lead to a concern with the contractual arrangement between the airline and the user of the service.” *Hodges*, 44 F.3d at 336. This helps courts distinguish between anticipated provisions of labor on the one hand, and air carriers’ actions outside the contractual bargain on the other.

Applying this definition, the Seventh Circuit held that claims that were “based on the airline’s refusal to transport passengers who had booked their flights” through the plaintiff travel agency clearly “related to” the airline’s provision of services, because those claims pertained directly to the airlines’ ticketing policies. *Travel*, 73 F.3d at 1428, 1434. However, “[c]ertain actions taken by airline personnel,” such as “a flight attendant assaulting a passenger... are undoubtedly not ‘services’ but only because... they are not part of the contractual agreement

with the airline.” *Id.* at 1434. Under the Seventh Circuit’s test “[t]he crucial inquiry is the underlying nature of the actions taken, rather than the manner in which they are accomplished.” *Id.* In other words, courts must ask whether the actions addressed in a plaintiff’s complaint substantively relate to “bargained-for or anticipated provision of labor.” *Id.* at 1433 (citing *Hodges*, 44 F.3d at 336).

Plaintiffs allege that Defendant willfully or negligently created an environment in which Plaintiffs suffered racist threats, harassment, and intimidation. J.A. 12–18. Plaintiffs’ claims do not relate to contractually bargained-for services, such as the provision of drinks, but to how Defendant permitted conduct that customers would never consider “part of any contractual arrangement with the airline.” *Travel*, 73 F.3d at 1434. It is true that Plaintiffs’ complaint addresses the service of drinks to the Train group. J.A. 12–14. But this is only part of Plaintiffs’ allegations that Defendant’s action or inaction subjected Plaintiffs to harassment and mistreatment. That is why the complaint additionally describes failures to forcefully reprimand Plaintiffs’ harassers, call security, or take other protective measures. *Id.* Simply put, Plaintiffs’ allegations relate to how Defendant created an environment in which minority customers were harassed and subjected to racial epithets—treatment over which customers should *never* have to bargain. Because the complaint addresses behavior outside the contractual bargain, the ADA does not preempt Plaintiffs’ claims.

**B. To the extent Plaintiffs’ claims might refer to “services” within the meaning of ADA, these claims address issues of safety, not economics.**

Even if the Court views Plaintiffs’ claims, in part, as addressing the service of drinks or other contractually bargained-for services, Plaintiffs’ claims are not preempted because they would not embody the kind of *economic* regulation that the ADA sought to preempt. As previously described, the text, structure, and purpose of the ADA show that the statute was

concerned only with economic deregulation, not with displacing personal injury tort law. When the CAB stressed that “preemption extends to all of *the economic factors* that go into the provision of the *quid pro quo*” of passengers’ fares, it understood that the ADA’s preemptive effect extends only to the kind of economic regulation that the federal government had conducted before 1978. 44 Fed. Reg. 9948, 9949, 50 (1979) (emphasis added). Thus, if the Act displaces any tort law that relates to “services,” it can only be those claims that would functionally regulate the economic, rather than safety, decisions of airlines. *See Smith*, 44 F.3d at 346–47.

To determine whether economics or safety is at issue, a court need only ask “whether or not the specific common law action addresses matters about which the airlines wish or are likely to compete.” *Sedigh v. Delta Airlines, Inc.*, 850 F.Supp. 197, 201 (E.D.N.Y. 1994). If this Court permits Plaintiffs to bring their claims, Defendant will not alter its competitive strategy, say by offering higher quality drinks. Nor will Defendant have to reconsider its “contractual decisions whether to board particular ticketed passengers” out of economic concerns around overbooking or charter arrangements. *Smith*, 44 F.3d at 347. Instead, Defendant will reconsider its safety guidelines and its employee training related to identifying, boarding, serving, and controlling intoxicated or reckless passengers that might pose a threat to others. It will redouble efforts to keep minority passengers safe from intimidation and harassment.

If these changes in safety policy have an impact on Defendant’s costs of providing “services,” “the effect is ‘too tenuous, remote or peripheral’ to be preempted by § 1305(a)(1).” *Id.* (quoting *Morales*, 112 S.Ct. at 2040). Indeed, state tort claims addressing racist mistreatment of airline passengers affect services in just as “tenuous” or “remote” a manner as “state laws against gambling and prostitution as applied to airlines.” *Morales*, 112 S.Ct. at 2040. Airlines

can no more permit racist treatment of their customers with impunity as they can establish casinos in their waiting areas.

Put differently, this Court cannot expect that the competitive market will protect airlines' minority customers from harassment—it must act. Airlines do not compete for customers by making travel free of intimidation and racial epithets. Where an airline permits such behavior it cannot be because of a valid economic decision.

**C. Plaintiffs' claims would not have the “forbidden significant economic effect,” because their claims are not the functional equivalent of economic regulation of Defendant's services.**

Finally, Plaintiffs' claims would not exert a “forbidden significant effect” on services. *Morales*, 112 S.Ct. at 2039. In *Morales* the Supreme Court reasoned that even if the guidelines regarding airfare advertising did not “relate to” airline rates, it was “clear as an economic matter that state restrictions on fare advertising have the forbidden significant effect upon fares... [because] [r]estrictions on advertising ‘serve to increase the difficulty of discovering the lowest cost seller.’” *Id.* In other words, the Court stressed that the ADA preempted the guidelines even if the Court were to accept that the guidelines regulated the *advertising* of airfare rates, rather than airfare rates themselves. Economically, the Court said, this was a distinction without a difference.

We have already stressed that Plaintiffs' claims address Defendant's safety decisions, not its economic ones. That Plaintiffs seek punitive damages does not mean that their claims “have the forbidden significant [economic] effect” that *Morales* foreclosed. *Id.* That is because the claims for punitive damages would not be the functional equivalent of economic regulation of airlines' services. They would not alter economic decisions governing service provision but

would only further deter airlines from failing to provide a safe environment in which passengers are free from intimidation and threats, or (in other personal injury cases) actual physical harm.

This marks a difference with respect to punitive damage claims in breach of contract cases, where such damages might actually go awry of the *Wolens* holding. The Seventh Circuit held that while a claim for compensatory relief for breach of contract was not preempted by the ADA, a claim for punitive damages relating to rates, routes, or services was because “[r]ather than merely holding parties to the terms of a bargain, punitive damages represent an ‘enlargement or enhancement [of the bargain] based on state laws or policies external to the agreement.’” *Travel*, 73 F.3d at 1432 n.8 (quoting *Wolens*, 115 S.Ct. at 826). That is true for contract claims, in which punitive damages are rare and thus do act as “enlargement or enhancement based on state laws or policies external to the agreement.” *Wolens*, 115 S.Ct. at 826. But courts routinely grant punitive damages in tort claims to deter undesirable conduct. *Wolens* asks whether a plaintiff’s claims permit states to “impose their own public policies or theories of competition or regulation on the operations of an air carrier.” *Id.* at 824 n.5. Punitive damages in a breach of contract case would spill into regulating the economics of contractual decisions; but the damages in Plaintiffs’ tort suit still regulate safety.

This distinction between economics and safety again follows logically from *Wolens*, in which two concurrences stated that the majority opinion did not, in their estimation, bar personal injury claims. *Wolens*, 115 S.Ct. at 827–28 (Stevens, J., concurring in part); *Id.* at 830 (O’Connor, J., concurring in part). The reality is that “[e]very judgment against an airline will have some effect on rates, routes, or services, at least at the margin... [and in] response to adverse judgments airlines may have to raise rates, or curtail routes or services, to make up for lost income.” *Id.* at 827 n.2 (Stevens, J., concurring in part). As a result, courts must distinguish

between claims that function to regulate the economics of rates, routes, and services and those that do not. Because Plaintiffs' claims, even those for punitive damages, regulate only safety concerns, their claims are not preempted.

### **CONCLUSION**

The district court's judgment should be reversed.

**Applicant Details**

First Name	Loren											
Last Name	Miller											
Citizenship Status	U. S. Citizen											
Email Address	<a href="mailto:lmiller@jd22.law.harvard.edu">lmiller@jd22.law.harvard.edu</a>											
Address	<table><tr><td>Address</td></tr><tr><td>Street</td></tr><tr><td>22 Centre Street, #4</td></tr><tr><td>City</td></tr><tr><td>Cambridge</td></tr><tr><td>State/Territory</td></tr><tr><td>Massachusetts</td></tr><tr><td>Zip</td></tr><tr><td>02139</td></tr><tr><td>Country</td></tr><tr><td>United States</td></tr></table>	Address	Street	22 Centre Street, #4	City	Cambridge	State/Territory	Massachusetts	Zip	02139	Country	United States
Address												
Street												
22 Centre Street, #4												
City												
Cambridge												
State/Territory												
Massachusetts												
Zip												
02139												
Country												
United States												
Contact Phone Number	5167213097											

**Applicant Education**

BA/BS From	<b>University of Pennsylvania</b>
Date of BA/BS	<b>May 2014</b>
JD/LLB From	<b>Harvard Law School</b>
	<a href="https://hls.harvard.edu/dept/ocs/">https://hls.harvard.edu/dept/ocs/</a>
Date of JD/LLB	<b>May 26, 2022</b>
Class Rank	<b>School does not rank</b>
Law Review/Journal	<b>Yes</b>
Journal(s)	<b>Harvard Journal on Legislation</b>
Moot Court Experience	<b>No</b>

**Bar Admission****Prior Judicial Experience**

Judicial Internships/Externships	<b>No</b>
Post-graduate Judicial Law Clerk	<b>No</b>

## Specialized Work Experience

### Recommenders

Mack, Kenneth  
kmack@law.harvard.edu  
617-495-5473

Steiker, Carol  
steiker@law.harvard.edu  
617-496-5457

Cohen, I. Glenn  
igcohen@law.harvard.edu  
617-496-2518

**This applicant has certified that all data entered in this profile and any application documents are true and correct.**

**LOREN MILLER**

22 Centre Street, #4, Cambridge, MA 02139 | 516-721-3097 | lmiller@jd22.law.harvard.edu

April 10, 2022

The Honorable Lewis J. Liman  
United States District Court, Southern District of New York  
Daniel Patrick Moynihan United States Courthouse  
500 Pearl Street, Room 701  
New York, NY 10007-1312

Dear Judge Liman:

I am writing to apply for a clerkship in your chambers for the 2024 term. I am a third-year student at Harvard Law School and have served as an editor of the *Harvard Journal on Legislation*. Following graduation, I will join the New Jersey Office of the Attorney General in the two-year AG Honors Program.

Enclosed please find my resume, law school transcript, undergraduate transcript, and writing sample. The following people are submitting letters of recommendation separately:

Professor I. Glenn Cohen  
Harvard Law School  
igcohen@law.harvard.edu  
(617) 496-2518

Professor Kenneth W. Mack  
Harvard Law School  
kmack@law.harvard.edu  
(617) 495-5473

Professor Carol Steiker  
Harvard Law School  
steiker@law.harvard.edu  
(617) 312-9168

I would welcome the opportunity to interview with you and would be honored to contribute to the important work of your chambers. Thank you for your time and consideration.

Best,



Loren Miller

## LOREN MILLER

22 Centre Street, #4, Cambridge, MA 02139 | 516-721-3097 | lmill@jd22.law.harvard.edu

### EDUCATION

#### HARVARD LAW SCHOOL, Candidate for J.D., May 2022

Activities: *Harvard Journal on Legislation*, Executive Articles Editor  
 Jewish Law Students Association  
 Women's Law Association Big/Little Sister Program  
 Professor Kenneth W. Mack, Research Assistant  
 Professor Carol S. Steiker, Research Assistant

#### UNIVERSITY OF PENNSYLVANIA, B.A., *magna cum laude* in Health and Societies, May 2014

Honors: Dean's List (Academic Years 2011-2012, 2012-2013)  
 Select Activities: West Philadelphia Tutoring Project  
 Orthodox Community at Penn  
*Penn Bioethics Journal*; *The Penn Review* literary journal

### EXPERIENCE

#### NEW JERSEY OFFICE OF THE ATTORNEY GENERAL, Newark, NJ September 2022 – August 2024

*Law Clerk, AG Honors Program (Affirmative Civil Rights & Labor Enforcement Section placement anticipated)*

Will participate in two-year program with opportunities to help formulate policy and legal strategy, investigate cases, draft legal pleadings, negotiate with opposing counsel, and argue in court or before administrative bodies.

#### U.S. DEPARTMENT OF JUSTICE, CIVIL RIGHTS DIVISION, Remote October 2021 – January 2022

*Legal Intern*

Supported Special Litigation Section inquiries, investigations, litigation, and compliance monitoring. Assignments included legal and factual research, participating in strategy sessions, drafting memoranda, and cite-checking.

#### WASHINGTON LAWYERS' COMMITTEE FOR CIVIL RIGHTS & URBAN AFFAIRS, Remote May–July 2021

*Legal Intern*

Contributed to impact litigation dockets, from intakes and case investigation through settlement or judgment. Assignments focused on legal research and writing in support of litigation, including developing research memoranda and drafting sections of complaint. Participated in ongoing litigation strategy meetings and public advocacy efforts.

#### NEW YORK STATE OFFICE OF THE ATTORNEY GENERAL, Remote July–August 2020

*Legal Intern, Health Care Bureau*

Conducted research and drafted memoranda to prepare responses to arguments raised by Defendants' motion to dismiss in cigarette smuggling suit. Assisted in trial preparation for opioid litigation, including advocacy to ensure public access to hearings during pandemic. Drafted memorandum on recent efforts to regulate air ambulance industry.

#### GLOBAL HEALTH STRATEGIES, New York, NY 2018–2019

*Senior Associate*

Managed communications and advocacy activities for international health and development clients. Communicated with media and oversaw press conference efforts at reproductive health conference, and conducted research for expert panel at advocacy event. Drafted, edited, and distributed press materials, including op-eds and press releases.

#### CHANDLER CHICCO AGENCY, New York, NY 2014–2018

*Healthcare Communications Specialist*

Planned long-term initiatives and managed projects for public relations clients. Researched, drafted, and edited press releases, digital patient resources, and social media content. Managed medical, legal, and regulatory review process.

### PERSONAL

Honors: Selected as 2022 Finalist for Presidential Management Fellows Program.

Volunteerism: Penn alumni interviewer for admissions; former middle school math tutor with Top Honors in NYC.

Language skills: Hebrew (conversational) and Spanish (basic).

Interests: Word games, especially *New York Times*' Spelling Bee; cooking, especially cheesy pasta dishes.



Harvard Law School

Record of: Loren N Miller

Date of Issue: March 28, 2022  
 Not valid unless signed and sealed  
 Page 2 / 2

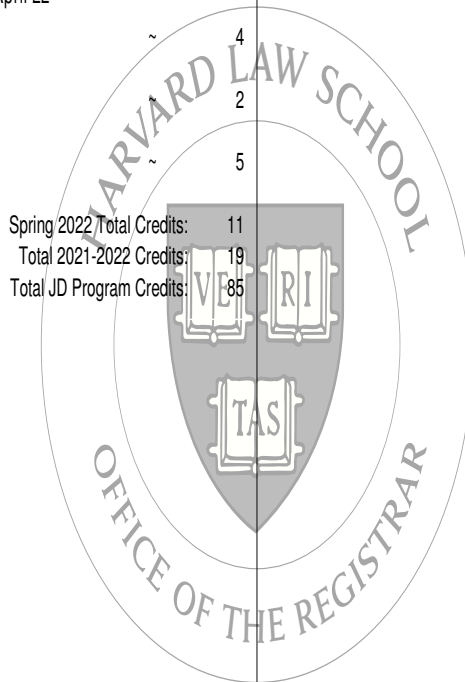
Fall-Winter 2021 Term: September 01 - January 21

8099	Independent Clinical - U.S. Department of Justice, Civil Rights Division	EXT	0
	Wroblewski, Jonathan		
	Fall-Winter 2021 Total Credits:		0

Spring 2022 Term: February 01 - April 22

2050	Criminal Procedure: Investigations		4
	Natapoff, Alexandra		
2068	Employment Discrimination		2
	Churchill, Steve		
2086	Federal Courts and the Federal System		5
	Goldsmith, Jack		
	Spring 2022 Total Credits:		11
	Total 2021-2022 Credits:		19
	Total JD Program Credits:		85

End of official record



*Loren Miller*  
 Assistant Dean and Registrar

**HARVARD LAW SCHOOL**  
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1585 Massachusetts Avenue  
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[www.law.harvard.edu](http://www.law.harvard.edu)  
[registrar@law.harvard.edu](mailto:registrar@law.harvard.edu)

Transcript questions should be referred to the Registrar.

~~~~~  
**In accordance with the Family Educational Rights and Privacy Act of 1974, information from this transcript may not be released to a third party without the written consent of the current or former student.**  
~~~~~

A student is in good academic standing unless otherwise indicated.

#### **Accreditation**

Harvard Law School is accredited by the American Bar Association and has been accredited continuously since 1923.

#### **Degrees Offered**

J.D. (Juris Doctor)  
LL.M. (Master of Laws)  
S.J.D. (Doctor of Juridical Science)

#### **Current Grading System**

**Fall 2008 – Present:** Honors (H), Pass (P), Low Pass (LP), Fail (F), Withdrawn (WD), Credit (CR), Extension (EXT)

All reading groups and independent clinicals, and a few specially approved courses, are graded on a Credit/Fail basis. All work done at foreign institutions as part of the Law School's study abroad programs is reflected on the transcript on a Credit/Fail basis. Courses taken through cross-registration with other Harvard schools, MIT, or Tufts Fletcher School of Law and Diplomacy are graded using the grade scale of the visited school.

**Dean's Scholar Prize (\*):** Awarded for extraordinary work to the top students in classes with law student enrollment of seven or more.

#### **Rules for Determining Honors for the JD Program**

*Latin honors are not awarded in connection with the LL.M. and S.J.D. degrees.*

#### **May 2011 - Present**

<i>Summa cum laude</i>	To a student who achieves a prescribed average as described in the <u>Handbook of Academic Policies</u> or to the top student in the class
<i>Magna cum laude</i>	Next 10% of the total class following <i>summa</i> recipient(s)
<i>Cum laude</i>	Next 30% of the total class following <i>summa</i> and <i>magna</i> recipients

All graduates who are tied at the margin of a required percentage for honors will be deemed to have achieved the required percentage. Those who graduate in November or March will be granted honors to the extent that students with the same averages received honors the previous May.

#### **Prior Grading Systems**

**Prior to 1969:** 80 and above (A+), 77-79 (A), 74-76 (A-), 71-73 (B+), 68-70 (B), 65-67 (B-), 60-64 (C), 55-59 (D), below 55 (F)

**1969 to Spring 2009:** A+ (8), A (7), A- (6), B+ (5), B (4), B- (3), C (2), D (1), F (0) and P (Pass) in Pass/Fail classes

#### **Prior Ranking System and Rules for Determining Honors for the JD Program**

*Latin honors are not awarded in connection with the LL.M. and S.J.D. degrees.*

Prior to 1961, Harvard Law School ranked its students on the basis of their respective averages. From 1961 through 1967, ranking was given only to those students who attained an average of 72 or better for honors purposes. Since 1967, Harvard Law School does not rank students.

<b>1969 to June 1998</b>	<b>General Average</b>
<i>Summa cum laude</i>	7.20 and above
<i>Magna cum laude</i>	5.80 to 7.199
<i>Cum laude</i>	4.85 to 5.799

#### **June 1999 to May 2010**

<i>Summa cum laude</i>	General Average of 7.20 and above (exception: <i>summa cum laude</i> for Class of 2010 awarded to top 1% of class)
<i>Magna cum laude</i>	Next 10% of the total class following <i>summa</i> recipients
<i>Cum laude</i>	Next 30% of the total class following <i>summa</i> and <i>magna</i> recipients

#### **Prior Degrees and Certificates**

LL.B. (Bachelor of Laws) awarded prior to 1969.

The I.T.P. Certificate (not a degree) was awarded for successful completion of the one-year International Tax Program (discontinued in 2004).

  
Assistant Dean and Registrar

## UNIVERSITY of PENNSYLVANIA

OFFICE OF THE UNIVERSITY REGISTRAR

Margaret Kip  
University RegistrarRECORD OF  
ID NUMBER  
DATE OF ISSUELOREN N. MILLER  
67223269  
06/10/21

BIRTHDATE: 02/02/92

## RECORD OF WORK DONE

[ \* \* \* \* \* ]  
[ AT THE UNDERGRADUATE LEVEL ]  
[ \* \* \* \* \* ]

THE UNIVERSITY NAME APPEARS IN WHITE PRINT ACROSS THE FACE OF THIS RECORD

EXPLANATORY LEGEND AND AUTHENTICITY STATEMENT APPEARS ON REVERSE SIDE




***** ACADEMIC PROGRAM *****				***** UNIVERSITY OF PENNSYLVANIA COURSE WORK *****			
Admitted From: NORTH SHORE HEBREW ACADEMY				(Continued from previous column)			
School: ARTS & SCIENCES				Spring 2012	COLLEGE OF ARTS & SCIENCES		
Division: COLLEGE OF ARTS & SCIENCES				CHEM 054	GEN CHEM LAB II	0.50	CU A
Degree Program: BACHELOR OF ARTS				(Quantitative Data Analysis Course)			
Major: HEALTH & SOCIETIES				CHEM 102	GENERAL CHEMISTRY II	1.00	CU A-
Concentration: HEALTH POLICY & LAW				ENGL 104	STUDY OF A PERIOD:		
					THE 21ST CENTURY	1.00	CU A+
				HSOC 010	HEALTH & SOCIETIES	1.00	CU A-
				PHYS 101	GEN. PHYS: MECH, HEAT, SOUND: General		
					Physics: Mechanics, Heat and Sound	1.50	CU A
					(Quantitative Data Analysis Course)		
					Term Statistics:	5.00	CU GPA 3.88
					Cumulative:	18.50	CU GPA 3.76
***** DEGREES AWARDED *****							
05-19-14	BACHELOR OF ARTS			Fall 2012	COLLEGE OF ARTS & SCIENCES		
	MAGNA CUM LAUDE			ARTH 205	INTRO TO MED ARCHAEOLOGY	1.00	CU A
				BIOE 565	RATIONING	1.00	CU A
				HSOC 238	MEDICAL ANTHROPOLOGY	1.00	CU A-
				SOCI 135	LAW & SOCIETY	1.00	CU A
					Term Statistics:	4.00	CU GPA 3.93
					Cumulative:	22.50	CU GPA 3.79
***** HONORS *****							
Dean's List 2011-12 2012-13				Spring 2013	COLLEGE OF ARTS & SCIENCES		
				ENGL 078	SHERLOCK, JAMES, HARRY: TRANSMEDIA		
					CHARACTERS	1.00	CU A-
				HSOC 003	TECHNOLOGY AND SOCIETY	1.00	CU A
				HSOC 241	STEM CELLS, SCI, & SOC	1.00	CU A-
				LGST 210	CORP RESP AND ETHICS	1.00	CU A-
					Term Statistics:	4.00	CU GPA 3.78
					Cumulative:	26.50	CU GPA 3.79
Fall 2010	COLLEGE OF ARTS & SCIENCES			Fall 2013	COLLEGE OF ARTS & SCIENCES		
BIOL 101	INTRO BIOLOGY A	1.50	CU B	BEPP 201	INTRO TO BUSINESS ECONOM	1.00	CU B+
COMM 141	PUB POL, MUSEUMS & CULT	1.00	CU A-	COMM 226	INTRO TO POLITICAL COMM	1.00	CU P
HSOC 042	SNIP & TUCK HIST OF SURG	1.00	CU A	PUBH 507	Ethics, Law and Public Policy		
MATH 104	CALCULUS I	1.00	CU B+			1.00	CU A-
	Term Statistics:	4.50	CU GPA 3.44	SOCI 100	INTRO SOC RESEARCH	1.00	CU A
	Cumulative:	4.50	CU GPA 3.44		(Quantitative Data Analysis Course)		
Spring 2011	COLLEGE OF ARTS & SCIENCES				Term Statistics:	4.00	CU GPA 3.67
BIOL 102	INTRO BIOLOGY B	1.50	CU A-		Cumulative:	30.50	CU GPA 3.77
ENVS 407	Prevention of Tobacco Addiction in			Spring 2014	COLLEGE OF ARTS & SCIENCES		
	Pre-Adolescent Children of			HIST 416	EURO INTELL HIST 18TH C	1.00	CU P
	Philadelphia	1.00	CU A	HSOC 499	CAPSTONE INDEPENDENT STD	1.00	CU A
SOCI 137	SOC. OF MEDIA & POP CULT	1.00	CU A	LGST 206	NEGOTIATION/CONFLICT RES	1.00	CU A
WRIT 039	WRITING SEMINAR IN ENGL:				Term Statistics:	3.00	CU GPA 4.00
	CONT. POETRY AND PRESS	1.00	CU A-		Cumulative:	33.50	CU GPA 3.79
	Term Statistics:	4.50	CU GPA 3.83		Equivalent Credit:	5.00	CU
	Cumulative:	9.00	CU GPA 3.64		Total Credit:	38.50	CU
Fall 2011	COLLEGE OF ARTS & SCIENCES						
CHEM 053	GEN CHEM LAB I	0.50	CU A				
	(Quantitative Data Analysis Course)						
CHEM 101	GENERAL CHEMISTRY I	1.00	CU A-				
ENGL 103	LITERARY GENRES:						
	WHAT IS A PLAY? DRAMA	1.00	CU A				
SOCI 275	MEDICAL SOCIOLOGY	1.00	CU A+				
STAT 111	INTRODUCTORY STATISTICS	1.00	CU A-				
	(Quantitative Data Analysis Course)						
	Term Statistics:	4.50	CU GPA 3.87				
	Cumulative:	13.50	CU GPA 3.71				

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PAGE 1 OF 2

TRANSLUCENT GLOBE ICONS MUST BE VISIBLE FROM BOTH SIDES OF TRANSCRIPT WHEN HELD TOWARD LIGHT SOURCE

UNIVERSITY of PENNSYLVANIA OFFICE OF THE UNIVERSITY REGISTRAR			 Margaret Kip University Registrar	
RECORD OF ID NUMBER DATE OF ISSUE	LOREN N. MILLER 67223269 06/10/21	BIRTHDATE: 02/02/92	RECORD OF WORK DONE	
			[ * * * * * ]	
			[ AT THE UNDERGRADUATE LEVEL ]	
			[ * * * * * ]	
* * * * * PENN EQUIVALENT CREDIT * * * * *				
Advanced Placement Credit:				
	ENGL FREE	1.00 CU		
	HIST 41	1.00 CU		
	HIST 42	1.00 CU		
External Transfer Credit:				
	HEBR 54	1.00 CU		
	HEBR 59	1.00 CU		
Total Penn Equivalent Credit Awarded: 5.00 CU				
* * * * * NO OFFICIAL ENTRIES BEYOND THIS POINT * * * * *				
				
				
PAGE 2 OF 2				
TRANSLUCENT GLOBE ICONS MUST BE VISIBLE FROM BOTH SIDES OF TRANSCRIPT WHEN HELD TOWARD LIGHT SOURCE				

THE UNIVERSITY NAME APPEARS IN WHITE PRINT ACROSS THE FACE OF THIS RECORD

EXPLANATORY LEGEND AND AUTHENTICITY STATEMENT APPEARS ON REVERSE SIDE

## TRANSCRIPT INTERPRETATION

## GENERAL INFORMATION

The official signature of the Registrar is white and appears on the front of this document in the upper right. Reject document as official if signature is distorted.

## Course Numbering System

1-399	Undergraduate courses
400-499	Mixed courses primarily for Undergraduate students
500-599	Mixed courses primarily for Graduate students
600-989	Graduate courses
990-999	Graduate individual study (thesis/dissertation) courses

## Course Units, Semester Hours and Credit Hours

Credit information appears to the right of the course information on the transcript.

Effective Spring 2014, a course unit should be converted to Semester Hours at a ratio of 1:4. Previous to Spring 2014 a course unit should be converted to Semester Hours at a ratio of 1:3.

A course unit (CU) generally represents one course that meets for 3 hours per week of class time, 4 hours of laboratory, or 5 hours of class time in beginning language courses, in a course that lasts for one term (semester).

A semester hour (SH) is defined as one hour per week of class time per term, or equivalent in other course-related activities.

Courses for which no credit is awarded appear with parentheses around their credit value, for example (1.00).

Penn Equivalent Credit is added to the credit total under the last term appearing on the transcript. It includes internal and external transfer credit, advanced placement credit, and credit by examination.

An H or GH preceding the course number indicates an honors course.

Free-form text included in current transcripts is concluded by §. At the end of the transcript message NO OFFICIAL ENTRIES BEYOND THIS POINT appears.

## Key to Grades

## Term and Cumulative Averages

Not all schools use grade-point averages on the transcript. When averages appear, they are calculated according to this scale (except for the School of Dental Medicine):

A+ 5.0	B+ 3.3	C+ 2.3	D+ 1.3
A 4.0	B 3.0	C 2.0	D 1.0
A- 4.0	B- 2.7	C- 1.7	D- 0.7
A- 3.7			F 0.00

## Key to Wharton Graduate Grades, Effective Summer 2006

A+ 4.00	B+ 3.33	C+ 2.33	D+ 1.33
A 4.00	B 3.00	C 2.00	D 1.00
A- 3.67	B- 2.67	C- 1.67	D- 0.67
			F 0.00

## INTERPRETING GRADES

The various schools and divisions of the University use different grading systems. The first section of the transcript, ACADEMIC PROGRAM, includes school division, and degree information. Find the table that corresponds to that information below. Exceptions will be noted in the appropriate table. For all schools NR = no grades reported for course and GR = no grade reported for student.

Table 1

Annenberg School of Communications  
Graduate Arts & Sciences

## Graduate School of Education

**School of Design**, formerly known as Graduate School of Fine Arts  
**Ph.D. programs** — All Ph.D. programs and School of Engineering and applied sciences Graduate and executive masters programs, effective Spring, 2003 (see Table 3 for data prior to Spring 2003)

**Law Students**, when taking courses outside the Law School: otherwise see Table 5 & Table 6

A+, A, A-	Distinguished
B+, B, B-	Good (in Annenberg, B- = Unsatisfactory)
C+, C, C-	Unsatisfactory
D+, D	Poor
D-	Poor (not used for Grad. Ed. Annenberg)
F	Failure
P	Pass = A+ to D- (not used for Ph.D. Annenberg, Fine Arts-Harrisburg)
S	Satisfactory progress (not used for Law students)
U	Unsatisfactory (not used for Law students)
I	Incomplete
I*	Permanent Incomplete (Ph.D. only)
W	Withdraw (Ph.D., Annenberg, Fine Arts Harrisburg only)
AUD	Audit (not used for Law students)

Table 2

<b>College Arts &amp; Sciences</b> , undergraduate
<b>College of General Studies</b>
<b>College of Liberal and Professional Studies</b>
<b>Summer Sessions</b>
<b>School of Nursing</b> , undergraduate (effective Fall, 1994)
<b>Wharton Evening School</b> (effective Fall, 1994)
<b>Wharton Graduate School</b> (effective Summer, 2006)
<b>Wharton School</b> , undergraduate (effective Fall, 1994)
<b>School of Engineering and Applied Science</b> , undergraduate
A+ Distinguished
A, A- Excellent
B+, B, B- Good
C+, C, C- Average
D+, D Below Average
F Failure
P Pass = A+ to D
S Satisfactory progress
U Unsatisfactory
I Incomplete
II Extended Incomplete (College Only)
I* Permanent Incomplete
W Withdraw
AUD Audit
X Academic Violation (CGS, Nursing & Engineering)

Table 3

<b>School of Engineering and Applied Science</b> — Undergraduates through Fall, 1996 (see Table 1 for data effective Spring, 1997)
<b>Graduate Programs &amp; Executive Management Programs</b> through Fall, 2002 (see Table 1 for data effective Spring, 2003)
<b>School of Nursing</b> (through Summer, 1994) except for Ph.D. programs (see Table 1)
A Distinguished
B Good
C Average (in graduate programs, C = Unsatisfactory)
D Below Average (in graduate programs, D = Poor)
F Failure
P Pass = A+ to D
S Satisfactory progress
U Unsatisfactory
I Incomplete
W Withdraw
AUD Audit
X Academic Violation (undergraduate only)

Table 4

<b>Dental School</b>
A Distinguished
B, B+ Good
C, C+ Average
E Exempt
F Failure
F/C Fail then Pass — Repeated Exams
H Honors
I Incomplete
IW Incomplete (Withdraw)
P Pass

Table 5

<b>Law School</b> (through Summer, 1995) except for courses outside the Law school (see Table 1)
O Outstanding
S Satisfactory
U Unsatisfactory
DD Distinguished
E Excellent
G Good
Q Qualified
U Unsatisfactory, with credit
UNC Unsatisfactory, no credit
F Failure
P Pass
I Incomplete
W Withdraw
CR Credit

These grades apply to first year courses in Professional Responsibility

Table 6

<b>Law School</b> (effective Fall, 1995) except for courses outside the Law school (see Table 1)
A+ Distinguished
A, A- Excellent
B+, B, B- Good
C Average
CR Credit
F Failure
FNC Failure — No Credit
H Honors
I Incomplete
P Pass
S Satisfactory Progress
W Withdraw

Table 7

<b>School of Social Policy and Practice</b> (formerly known as School of Social Work, DSW) except DSW program (see Table 8) and Ph.D. program (see Table 1)
CR Credit (Passed = B or better at graduate level)
F Failure
NCR Non-Credit course
I Incomplete
W Withdraw
WF Withdraw, Failing
P Pass

Table 8

<b>School of Social Policy and Practice</b> (formerly known as School of Social Work, DSW) (through Summer, 2002)
A Distinguished
B Good
C Unsatisfactory
F Failure
I Incomplete
W Withdraw (Social Work doctoral only)
WF Withdraw Failing, (Social Work doctoral only)
AUD Audit (Social Work doctoral only)

Table 9

<b>School of Social Policy and Practice</b> (formerly known as School of Social Work, DSW) (effective Fall, 2002)
A+ Distinguished
A, A- Excellent
B+, B, B- Good
Average
C+, C, C- Below Average
F Failure
CR Credit (Passed = B or better)
NCR Non-Credit course
I Incomplete
W Withdraw

Table 10

<b>Wharton Evening School</b> (through Summer, 1994)
<b>Wharton School</b> , undergraduate (through Summer, 1994)
A+ Distinguished
A Excellent
B Good
C Average
D Below Average
F Failure
P Pass = A+ to C (Wharton courses only, not given in Evening School)
I Incomplete
W Withdraw
AUD Audit
NC No credit (not given in Evening School)
X Academic Violation

Table 11

<b>Wharton School</b> , Executive MBA — (through Spring, 2006)
<b>Wharton School</b> , graduate except for Ph.D. programs (see Table 1)
DS Distinguished
HP High Pass
P Pass
I Incomplete
AUD Audit
NC No Credit

April 29, 2022

The Honorable Lewis Liman  
Daniel Patrick Moynihan United States Courthouse  
500 Pearl Street, Room 701  
New York, NY 10007-1312

Dear Judge Liman:

I write to lend my strong and enthusiastic support to Loren Miller's clerkship application. Loren was an excellent all-around student in my Property class in the fall of 2019. She was also my research assistant, and indeed was one of the two most impressive research assistants with whom I have worked in recent years (the other is the outgoing President of the Harvard Law Review). She did an excellent job as my RA, at a task that required the skills of a political science graduate student as well as those of a law student. Loren is a clear and incisive writer and legal thinker. She has a special curiosity about and affinity for thorny issues of law and policy – as she demonstrated in my Property course. She is a wonderful person with whom to work and interact. She is thoughtful, analytically rigorous, and an easy conversationalist. Loren will excel at anything she does and would make an excellent law clerk.

Loren was, of course, exceptional in her in-class interactions in my Property class – always sharp and well prepared when I called on her, and willing to add much to the class discussion that always enriched it. In terms of her in-class performance, I'd place her in the top five percent of that class – which contained some unusually bright students. I first began to notice what was distinctive about her when she started sending me things. When she saw a news article, a report, or a recent case or policy debate, she would immediately identify connections to what we were discussing in Property and email me with a link to what she had found. She wasn't the only student to have done this, but Loren seemed to have a unique knack for finding things that encapsulated legal issues that pushed past the boundaries of what we were learning. I recall once when we were discussing the well-known state-level doctrines that deal with blockage of sunlight, and their modern-day application to issues such as light blockage to solar panels, Loren came across an account that identified the opposite problem – regulation of access to shade, rather than sunlight, as a cutting edge issue in Los Angeles. I was so impressed with her quality of mind that I put her in touch with one of my fellow professors who teaches a class on the legal issues faced by state attorneys general, and Loren wound up spending her first summer in the office of the New York Attorney General.

Loren's exam answer was equally distinctive, easily earning her an Honors grade in the course. She was deft in her analysis of a complicated issue-spotting question concerning a condominium development and disability rights law. She was equally impressive with a set of well-thought-out and reasoned answers to questions that raised issues of public policy. I was deeply impressed with her answer to a question about the tensions in the doctrines that govern condominium development; she analyzed the doctrinal issues, related them to tensions that manifest themselves in other areas of property law, and propounded her own theory to manage those tensions and arrive at reasonable results – all within a few pages. She is a clear legal thinker and an exceptional writer. She communicates, clearly, concisely, and with analytical force.

It was an easy decision to hire her as a research assistant last year. I assigned her to one of my more difficult projects, which required her to gather and analyze election data from a number of state and federal elections in Illinois, synthesize it, and answer some difficult questions concerning which candidates were supported by which portions of the electorate. It involved basic questions such as: how does one get access to election data? Which data (exit polls, etc.) are more reliable than others? And how does one assemble and make sense of data that might have been gathered through differing methods for differing purposes? Loren had to contact people with expertise on the data, form her own conclusions, meet with me, return to the data, etc. Needless to say, it involved an unusual degree of initiative, analytical ability, and problem-solving skills. She is a dogged researcher and a clear writer. Indeed, her final memorandum analyzed the electoral results, and what the relevant sources of data can say about them, in a number of different elections, held in a number of different jurisdictions, and in a number of different election cycles. It was the most complex piece of analysis that I received from a research assistant in the past five or six years, but Loren presented and analyzed the materials with clarity and precision that I usually don't see even from my accomplished RAs. It was a truly distinctive accomplishment.

Loren aspires to a career in public service, and I expect her to do distinctive and noteworthy things in the law. She spent her first summer at perhaps the most high-profile Attorney General's office in the country and is going to spend her post-law school year working in the Honors Program at the New Jersey Attorney General's office. She is someone whom we will hear about in the coming years as she makes her way as a lawyer.

Loren Miller will perform at an exceptional level at just about anything she does, including a clerkship. She would be a truly excellent clerk, and I recommend her to you with enthusiasm. Please let me know if I can provide any more information.

Yours sincerely,

Kenneth W. Mack

Kenneth Mack - kmack@law.harvard.edu - 617-495-5473

April 12, 2022

The Honorable Lewis Liman  
Daniel Patrick Moynihan United States Courthouse  
500 Pearl Street, Room 701  
New York, NY 10007-1312

Dear Judge Liman:

I am delighted to write in support of the application of Loren Miller, Harvard Law School class of 2022, for a clerkship in your chambers. I have had the pleasure of teaching Loren in class and supervising her as one of my own research assistants. Loren is an extremely talented, hard-working, and socially committed law student who will make excellent contributions to chambers and to the legal profession. I recommend her with the greatest enthusiasm.

I first got to know Loren in the first semester of her first year in law school when she joined my 1L reading group on "Voices from Inside the Criminal Justice System." We offer 1L reading groups as voluntary, not-for-credit opportunities for first-year law students to engage with faculty on topics of mutual interest. The groups are small (capped at 12 students) and informal, and I tend to get to know these students well. I was delighted to have Loren in the group, as she made many terrific contributions to our discussions of first-hand accounts of the criminal justice process. She was also an excellent listener and responder to other students' contributions (which, frankly, is a rarer quality among law students). I was so impressed with Loren that I hired her as a research assistant during her 1L summer (I usually hire upper-level students), and I was so glad I did! Loren did a variety of projects for me relating to a book that I am working on about the death penalty for a popular audience. Loren is a self-starter, a tireless researcher, and an excellent writer. She is one of the most efficient RAs I have ever had, and I would hire her again in an instant.

Given Loren's excellent work for me as an RA during her 1L summer, I was not surprised when, as a student during her 2L year in my large course on "Capital Punishment in America," Loren scored one of the highest scores on the (blind-graded) final exam, earning a coveted "Dean's Scholar Prize" (the equivalent of an A+). The course engages deeply with constitutional law and the law of federal habeas corpus, and there is a large amount of dense, doctrinal reading. I always test heavily on federal habeas corpus, both because I spend two solid weeks on this complicated doctrine and because it tends to separate the sheep from the goats, so to speak. Loren demonstrated complete mastery of this difficult body of law—an accomplishment even more impressive in light of the fact that she has yet to take Federal Courts, the only other course that goes into detail on this topic. It is worth noting that my capital punishment course goes into depth with regard not only to death penalty-specific issues, but also key issues in the non-capital criminal process, such as jury selection, effective assistance of counsel, and general federal habeas standards, among others. Loren's careful attention to this course will prepare her well for a judicial clerkship.

Loren's career aspirations, evident from her impressive resume, lean toward public interest work, most likely at the intersection of health and civil rights. She has already built an impressive skill set, and obviously, a judicial clerkship will be invaluable to someone with Loren's ambitions. And she will bring a great deal to any judicial chambers lucky enough to have her. Loren is an extremely mature, conscientious, thoughtful, and amiable young woman who will get along well with all in chambers and be a terrific ambassador around the courthouse. She brings the full package of analytical power, well-developed academic skills, and softer (but no less important) personal skills. I do hope you give her application the most serious consideration.

I hope you find these comments helpful. If I can be of any further assistance, please do not hesitate to contact me by telephone at (617) 496-5457, or by email at [steiker@law.harvard.edu](mailto:steiker@law.harvard.edu).

Sincerely,

Carol Steiker  
Henry J. Friendly Professor of Law  
Harvard Law School

Carol Steiker - [steiker@law.harvard.edu](mailto:steiker@law.harvard.edu) - 617-496-5457

April 11, 2022

The Honorable Lewis Liman  
Daniel Patrick Moynihan United States Courthouse  
500 Pearl Street, Room 701  
New York, NY 10007-1312

Dear Judge Liman:

I write to you to give Loren Miller, a 3L at Harvard Law School, my highest recommendation for a clerkship in your chambers. Among her many other contributions, she is an Executive Articles and Supervising Editor of the *Harvard Journal on Legislation*. Loren was a student in my workshop on health law, bioethics, and biotechnology and also wrote an outstanding long paper for me as part of a "writing group" on health law, bioethics and biotechnology. Because I have observed her in these contexts, worked with her closely, and seen a considerable amount of her work product, I can confidently tell you that she would make an excellent clerk for your chambers.

Loren was a student in my workshop on health law, bioethics, and biotechnology in fall 2020. Twelve times a year we bring in presenters from ours or another law, medical, philosophical, economics, business school, public health, etc., faculty who give a lecture on a work in progress. The students then give written feedback to the presenters which I grade as "response papers," as well as participate in question and answer session for roughly 1.5 hours each class. The class thus requires the kind of sharp, focused, feedback on the work of someone much more senior than the student that is good practice for clerking. Loren's performance was excellent, both in her writing and comments in class, earning her the highest grade in the class, a Dean's Scholar grade.

Let me give a couple of examples of the quality of her work for this class. In response to portions of a new book by Prof. Mary Ziegler on the history of abortion litigation in the U.S. focused on the so-called "Partial Birth Abortion" federal prohibition that was ultimately upheld by the U.S. Supreme Court, Loren did a masterful job of examining the way in which the politics of science and deference to legislative findings in this area mirrors some of the current debates and politicization in vaccination and climate change. She also wrote a great paper in response to "Private Law Alternatives to the Individual Mandate," by Prof. Wendy Epstein and follow up work with Prof. Chris Robertson, which examines, among other things, whether we might prompt better uptake of health insurance absent an ACA mandate by framing it as other-directed cost sharing or by (copying from life insurance) adopting a return-of-premium policy approach. Loren's response came at the paper with some very subtle but important insights, in particular, whether the policies the authors were pursuing might drive initial insurance uptake but not retention over longer periods. What particularly impressed me is that she was able to make such arguments within the framework in which the authors themselves were working, a behavioral economics approach along the lines of the famous insights of Kahneman and Tversky. This was particularly impressive because, to my knowledge, this was not a topic where Lauren had prior background, and it sends a signal that she will be great in chambers at very quickly picking up new areas of law.

Loren also joined my small "writing group," which brought together six students who were writing papers on health law, bioethics, and biotechnology. Collectively we worked through model papers, outlines of each of their papers, problem patches of their drafts, and finally a completed draft they got to present and defend against questions. This course gives me an in-depth opportunity to see how they respond to feedback on their writing, work with others collaboratively, and ultimately how good their writing is. It is perhaps the course I teach that is closest to the work of a clerkship. Loren was outstanding and received the highest grade I am allowed to give for such courses and the attendant writing.

Her paper delves deeply into a very tangled area of U.S. Supreme Court case law, the standards the court uses for competency to stand trial and competency for execution. After providing a really excellent summary of the history of these doctrines, she deftly argues for a new standard that sets competency for execution at a higher threshold. What is really impressive is the way the paper combines doctrinal, philosophical, and pragmatic threads to produce something very convincing. Her writing is excellent. Personality-wise I also believe she will be an excellent fit for chambers. She takes her work seriously but does not take herself too seriously. She is the kind of person who "measures twice before she cuts once" and is extremely supportive of her colleagues and also excellent at taking feedback.

This is a young woman who has much to give to the world and I hope that under your mentorship she can begin doing so. My own clerkship was instrumental to my career, not only in terms of the mentorship and the improvement of my writing I received from my judge, but in building a life-long friendship that has followed me to every job I have pursued after law school. I think it is reasonable, then, for a judge to ask what this applicant will look like five or ten years from now if she gets a spot in your chambers. I think with Loren the possibilities are quite exciting. She has a particular interest at the intersection of civil rights and health law, and I can easily seeing her ascending to a leading position in one of the non-profits operating in the space. I cannot tell you exactly where her career will take her, but I am confident that when she returns for her tenth year reunion it will be a career of which she, and less importantly I, will be very proud.

In sum, as someone who clerked myself and then spent time as a litigator while at the Justice Department, I have a sense of the kind of person a judge can rely on as an outstanding clerk. I think Loren would make an excellent clerk for your chambers, and

I. Glenn Cohen - [igcohen@law.harvard.edu](mailto:igcohen@law.harvard.edu) - 617-496-2518

give her my strong recommendation. I would be happy to answer any more questions you might have about her.

Sincerely Yours,

I. Glenn Cohen

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**LOREN MILLER**

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WRITING SAMPLE

I drafted the attached brief during the fall 2021 semester for an assignment for Class Actions: Litigating Advanced Topics, taught by Professor Richard Clary. The prompt outlined a hypothetical scenario in which a high-end car manufacturer, ACME Company, advertised its ACME Green model as having “the lowest emissions scores of any gasoline-powered automobile on the U.S. market”—but a whistleblower alleged that this claim was based on fraudulent emissions scores. The prompt provided information regarding: ACME Green sales and pricing; brief descriptions of six potential named plaintiffs for a class action suit against ACME Company; plaintiffs’ intended litigation strategy; plaintiffs’ expert witness’s proposal for measuring damages; categories of state consumer fraud laws; and New Jersey choice of law rules.

Professor Clary requested a defense-side brief (excluding a facts section) in opposition to a class certification motion filed in the United States District Court for the District of New Jersey. He requested that the brief address whether it would be possible to challenge the certification of a nationwide class under the New Jersey consumer law and whether there are viable grounds for narrowing the proposed class. Professor Clary instructed us to utilize only the course readings in developing our briefs.

## **I. INTRODUCTION**

Since January 1, 2016, ACME Company (“ACME”) has sold and leased ACME Greens to tens of thousands of people across the United States. Manufactured in Michigan, this model is available in five regional showrooms—in California, Illinois, Texas, New York, and Florida—as well as through online orders, which are fulfilled through direct shipments to buyers and lessees spanning all 50 states. The cars have been sold at differing full and discounted price points, and a used car market, unaffiliated with ACME, has also emerged throughout the country.

Plaintiffs seek to certify a putative class based on a price premium theory of liability stemming from alleged conduct by ACME, but the Court should decline to certify this heterogeneous and unmanageable proposition. Plaintiffs’ proposed class comprises tens of thousands of persons who purchased or leased ACME Greens, new or used, over the course of three and a half years. The putative class definition improperly includes used car buyers, who lack Article III standing and undermine satisfaction of the requirements of Federal Rule of Civil Procedure 23(a). In addition, Plaintiffs fail to meet their burden to establish predominance and superiority under Rule 23(b). The proposed class would not only pose a challenge to efficiency and judicial economy, but would also reflect an unfair and unsuitable approach to adjudication of this matter.

## **II. LEGAL STANDARD**

Plaintiffs bear the burden of establishing the existence of Article III standing, a threshold issue that is a “necessary component of subject matter jurisdiction.” *In re Google Referrer Header Privacy Litig.*, 465 F. Supp. 3d 999, 1005 (N.D. Cal. 2020) (citation omitted). To satisfy Article III standing, a plaintiff “must have (1) suffered an injury in fact, (2) that is fairly traceable to the challenged conduct of the defendant, and (3) that is likely to be redressed by a

favorable judicial decision.” *Spokeo, Inc. v. Robins*, 136 S.Ct. 1540, 1547 (2016). In addition to the proposed named plaintiffs, “[e]very class member must have Article III standing in order to recover individual damages.” *TransUnion LLC v. Ramirez*, 141 S.Ct. 2190, 2208 (2021).

If Article III standing is established, “[c]lass certification is proper only if the trial court is satisfied, after a rigorous analysis, that the prerequisites of Rule 23 [of the Federal Rules of Civil Procedure] are met.” *In re Hydrogen Peroxide Antitrust Litig.*, 552 F.3d 305, 309 (3d Cir. 2008, amended 2009) (quotation and citation omitted).

Rule 23(a), a prerequisite for all class actions, provides that “[o]ne or more members of a class may sue . . . as representative parties on behalf of all members only if (1) the class is so numerous that joinder of all members is impracticable; (2) there are questions of law or fact common to the class; (3) the claims or defenses of the representative parties are typical of the claims or defenses of the class; and (4) the representative parties will fairly and adequately protect the interests of the class.” Fed. R. Civ. P. 23(a).

Plaintiffs seek certification under Rule 23(b)(3), which provides that a court may certify a class if it “finds that the [common] questions of law or fact . . . predominate over any questions affecting only individual members, and that a class action is superior to other available methods for fairly and efficiently adjudicating the controversy.” Fed. R. Civ. P. 23(b)(3).

### **III. ARGUMENT**

#### **A. The Putative Class Includes a Whole Category of Proposed Members Who Fail to Satisfy Article III Standing and Undermine the Prerequisites of Rule 23(a).**

The putative class definition is flawed from the outset based on the inclusion of buyers of used ACME Greens. These used car buyers cannot demonstrate Article III standing, and their inclusion challenges Plaintiffs’ contention of meeting the requirements of Rule 23(a).

**1. Buyers of Used ACME Greens Do Not Have Article III Standing.**

Used car buyers cannot establish Article III standing because it is not clear that they were injured, and any potential injury would not be “fairly traceable” to ACME’s alleged conduct. To establish Article III standing, a plaintiff’s injury must be “‘concrete and particularized’ and ‘actual or imminent, not conjectural or hypothetical.’” *Spokeo*, 136 S.Ct. at 1548 (quoting *Lujan v. Defenders of Wildlife*, 504 U.S. 555 (1992)). Used car buyers’ claimed injuries, however, are entirely conjectural; having purchased their cars from various sources, they cannot demonstrate that any alleged price premium for new ACME Greens was in fact sustained in the transition to a used car market, which comprises privately negotiated agreements and can involve series of resales from one buyer to the next. In addition, this independent used car market is unaffiliated with ACME, and it is purely speculative whether any alleged premium in purchases can be fairly traced to supposed conduct by ACME as opposed to other factors, such as the representations of individual resellers, who themselves may have purchased the cars used. The nexus to ACME is simply too attenuated, and used car buyers thus fail to meet the threshold standing requirement.

**2. Inclusion of Buyers of Used ACME Greens Runs Counter to the Requirements of Rule 23(a).**

Even if used car buyers could demonstrate Article III standing, they cannot overcome their shortcomings in addressing the requirements of Rule 23(a).

First, used car buyers are not sufficiently ascertainable as members of the putative class. As part of the numerosity requirement of Rule 23(a), a class must be “currently and readily ascertainable based on objective criteria.” *Carrera v. Bayer Corp.*, 727 F.3d 300, 305 (3d. Cir. 2013) (citation omitted). The Third Circuit requires further that if class members cannot be ascertained from a defendant’s records, plaintiffs must propose a method of ascertaining the class that “is reliable and administratively feasible, and permits a defendant to challenge the evidence

used to prove class membership.” *Id.* at 306–08. Regarding administrative feasibility in particular, “identifying class members [must be] a manageable process that does not require much, if any, individual factual inquiry.” *Id.* at 308 (citation omitted).

Here, Plaintiffs have not proposed any method for ascertaining used car buyers, who cannot be identified from ACME’s records. They point to no manageable process that would capture the myriad ways that used car buyers obtained ACME Greens, which may include purchases from new car dealerships, used car dealerships, and private parties. “[I]ndividualized fact-finding or mini-trials will be required to prove class membership” for these ACME Green buyers, amounting to a clear violation of ACME’s due process rights. *See id.* at 307.

Second, retaining used car buyers prevents a finding of commonality pursuant to Rule 23(a)(2). Class certification requires “the capacity of a classwide proceeding to generate common *answers* apt to drive the resolution of the litigation.” *Wal-Mart Stores, Inc. v. Dukes*, 131 S.Ct. 2541, 2551 (2011) (emphasis in original). The pricing allegations for used car buyers—who, in contrast to new buyers and lessees, did not interact with ACME or ACME dealers—cannot be resolved by the same answers that other members of the putative class seek to prove. Far from “demonstrat[ing] that the class members have suffered the same injury,” *id.* (internal quotation marks omitted), Plaintiffs present a putative class with proposed members who are very differently situated, and the alleged injury suffered by used car buyers is in tension with that of the resellers who sold the cars to them.

Finally, the inclusion of used car buyers in the putative class definition is incompatible with the purported adequacy of proposed named plaintiff Dakota Delta. Rule 23(a)(4) requires, in part, that “class representatives . . . have no known conflicts with any class member.” Fed. R. Civ. P. 23(a)(4). Delta, who resold her ACME Green in early 2018, has an inherent conflict with

used car buyers. She has an incentive to argue that resellers bore more, if not all, of the alleged price premium than did the buyers of the used vehicles in an effort to obtain a higher damages award. Despite Plaintiffs' expert witness's proposed 50-50 allocation of the alleged premium for resales before August 19, 2019—the weaknesses of which are discussed below—Delta's personal interests are plainly antagonistic to those of proposed absent class members who bought used ACME Greens. *See Price v. L'Oreal USA, Inc.*, No. 17 Civ. 614 (LGS), 2018 U.S. Dist. LEXIS 138473, at \*9–10 (S.D.N.Y. Aug. 15, 2018). Inclusion of used car buyers thus compromises Delta's ability to adequately represent the putative class.

For all of these reasons, used car buyers undercut the prerequisites of Rule 23(a) and should be excluded outright from the proposed definition for the putative class.

**B. The Putative Class Fails to Satisfy Rule 23(b).**

Regardless of whether used car buyers are included in the proposed class definition, the putative class falls far short of the predominance and superiority requirements of Rule 23(b).

**1. Individualized Issues Predominate Over Any Common Questions of Law or Fact.**

“Rule 23(b)(3)'s predominance criterion is even more demanding than Rule 23(a),” and thus courts have a “duty to take a ‘close look’ at whether common questions predominate over individual ones.” *Comcast Corp. v. Behrend*, 133 S.Ct. 1426, 1432 (2013) (quotation and citation omitted). A close look here at state law variation as well as issues as to common proof and the proposed damages methodology reveals Plaintiffs cannot clear this bar.

**a. Given Variations in States' Applicable Consumer Laws, the Putative Class Cannot Be Certified as Proposed.**

Application of New Jersey consumer law to all plaintiff claims is misguided—but introducing other states' laws only exacerbates the issue by undermining predominance. A

federal district court sitting in diversity must “apply the substantive law of the state in which it sits, including choice-of-law rules.” *In re Hyundai and Kia Fuel Economy Litig.*, 926 F.3d, 539, 563 (9th Cir. 2019). New Jersey’s choice-of-law rules provide that state courts apply the “most significant relationship” test to tort claims. Prompt #2. Courts must determine “[i]f an actual conflict exists between the laws of the relevant states,” and, if so, must “determine[] which state has the most significant relationship to the claim” based on factors such as: “the place where the injury occurred; the place where the conduct causing the injury occurred; the place of incorporation and place of business of the parties; the place where the relationship between the parties is centered; the relevant policies of other interested states and the relative interests of those states in the determination of the particular issue; and the protection of justified expectations.” *Id.*

Here, all 50 states are implicated in Plaintiffs’ allegations based on the varied residences of ACME Green buyers and lessees, and there is an “actual conflict” among three categories of laws that states employ: (1) the objective materiality standard, employed by New Jersey and 24 other states; (2) the subjective materiality standard, employed by 15 states; and (3) the subjective materiality standard combined with a requirement of proof of actual reliance, employed by 10 states. *See* Prompt #2. The “most significant relationship” test factors, however, do not support the application of New Jersey law to all claims, with consideration of “the relevant policies of other interested states and the relative interests of those states in the determination of the particular issue” weighing heavily against. “Every state has a strong interest in applying its consumer protection laws to transactions within its borders that affect its residents.” *Freedline v. O Organics*, No. 19-cv-01945-JD, 2020 U.S. Dist. LEXIS 199873, at \*5 (N.D. Cal. Oct. 27, 2020) (quotation and citation omitted). Indeed, these laws reflect each individual state’s

judgment on the appropriate balance between consumer protection and maintaining a favorable business environment. *Id.* While ACME acknowledges that it may be appropriate for plaintiffs from New Jersey as well as those from states with identical objective materiality standards to assert a single claim under New Jersey consumer law, allowing plaintiffs from the 25 other states to assert a claim under New Jersey law in one nationwide class would not only disregard the compelling interests of those states in the determination of this matter but would also flout the federalist principles underpinning our system of government.

Even if claims are brought under the consumer laws of the other 25 states, though, predominance concerns remain. Plaintiffs have “the ultimate burden to demonstrate that any variations in relevant state laws do not predominate over the similarities.” *Langan v. Johnson & Johnson Consumer Cos., Inc.*, 897 F.3d 88, 97 (2d Cir. 2018). Yet Plaintiffs have not done so—nor can they. Variation between objective and subjective standards of materiality naturally “cause class members’ interests to diverge,” *see In re Am. Int’l Grp., Inc. Sec. Litig.*, 689 F.3d 229, 243 (2d Cir. 2012), as the respective availability of a non-rebuttable versus rebuttable presumption of materiality has a significant impact on the viability of putative class members’ claims. Further, claims brought under the consumer laws of the 10 states requiring proof of actual reliance would be inappropriate for class treatment in any circumstance because questions as to reliance are individualized and would overwhelm questions common to the class. *See e.g., id.* at 241. ACME notes, but does not concede, that utilizing a subclass for claims under state laws with subjective materiality standards *might* help address predominance concerns. However, Plaintiffs have not proposed one, and any potential subjective materiality subclass still could not solve for the 10 states that also require proof of actual reliance. Plaintiffs have failed to meet

their burden, and so, whether for claims under New Jersey law or under all three categories of state laws, the putative class cannot be certified as proposed.

**b. Plaintiffs Cannot Establish with Common Evidence that Putative Class Members Paid a Price Premium for ACME Greens.**

Plaintiffs claim that ACME’s alleged conduct led ACME Green purchasers and lessees to pay more than they would have otherwise, but they cannot support this theory with common evidence as required by Rule 23(b)(3). The “longstanding rule” in the Third Circuit requires that “a putative class must demonstrate that its claims are capable of common proof at trial by a preponderance of the evidence.” *In re Lamictal Direct Purchaser Antitrust Litig.*, 957 F.3d 184, 191 (3d Cir. 2020). However, even if Plaintiffs could establish a “true price” for ACME Greens—which ACME disputes below—they cannot show that the putative class as a whole was injured with a price premium. As discussed above, there is a genuine ambiguity regarding to what extent an alleged premium would have been borne by used car buyers versus resellers, yet Plaintiffs offer only an expert’s unsupported assumptions to resolve the question and do not address the possibility that a used car buyer could have purchased the vehicle from another used car buyer. In addition, the proposed class definition does not exclude absent members like Zoe Zeta who obtained ACME Greens at cost and thus certainly were uninjured (and would have to be excluded for lack of Article III standing in any case). In sum, it is impossible, absent individualized inquiry that would defeat a finding of predominance, to discern whether a given member of the putative class suffered the injuries alleged here.

**c. Plaintiffs’ Proposed Model for Measuring Damages Does Not Reflect Their Theory of Liability.**

Plaintiffs also fail to meet predominance requirements as to their proposed methodology for measuring damages. To satisfy predominance under Rule 23(b)(3), “any model supporting a

plaintiff's damages case must be consistent with its liability case." *Comcast*, 133 S.Ct. at 1433. For a theory of liability centered on alleged misrepresentations that resulted in a price premium, as Plaintiffs assert here, "[p]laintiffs must . . . propose a damages model that determines the value attributable to the [c]hallenged [c]laims." *Price*, 2018 U.S. Dist. LEXIS 138473, at \*23–24. The model set forth by Plaintiffs' expert Dr. Langdell purports to calculate this value, but closer examination reveals the model to be wholly unreliable.

First, Dr. Langdell's work rests on a number of perfunctory, unsubstantiated assumptions that obscure legitimate uncertainty and complexity. She assumes that the "true price" of an ACME Green is \$30,000, based on its current list price, but she does not consider how the negative market environment may have impacted ACME's latest pricing decisions. She assumes that any differences in price were entirely attributable to alleged statements regarding emission scores, but she does not consider the value of statements regarding qualities like the speed or sleekness of the cars, which are not in dispute. She assumes that for leases, the alleged price inflation would be spread out evenly over the length of the lease, but she does not consider other types of lease contract structures. Dr. Langdell's additional presumptions regarding the amount of alleged price inflation incorporated into lease payments and the lack of recovery of the alleged premium for putative class members who resold their ACME Greens after August 30, 2019 are similarly presented with no support at all.

Second, Dr. Langdell's approach to recovery for sellers and used car buyers for resales before August 30, 2019 is particularly flawed. She provides no evidence that records from 50 resales are statistically adequate to make a generalization for all resales during this period. In addition, use of averages is inappropriate where the market is characterized by individual negotiations, as the used car market is here. *See In re Lamictal*, 957 F.3d at 193. Finally, Dr.

Langdell implausibly presumes a single transaction selling a used vehicle from new car buyer to used car buyer in all cases, overlooking realities in the used car market.

Rather than calculating “the [alleged] difference between what Plaintiffs thought they were getting and what they actually got,” *Price*, 2018 U.S. Dist. LEXIS 138473, at \*26, Dr. Langdell’s model ultimately amounts to a shot in the dark. Although the Third Circuit does not require that damages be “susceptible of measurement across the *entire* class,” *see In re Lamictal*, 957 F.3d at 195 (emphasis added) (citation omitted), Dr. Langdell’s report fails to demonstrate susceptibility to sound measurement at all. At the class certification stage, the Court must determine based on rigorous analysis whether an expert’s opinion is persuasive or unpersuasive as to a Rule 23 requirement. *See In re Hydrogen Peroxide*, 552 F.3d at 323–24. Here, the methodology of Plaintiffs’ expert merely ensures that “[q]uestions of individual damage calculations will inevitably overwhelm questions common to the class.” *Comcast*, 133 S.Ct. at 1433.

## **2. Plaintiffs Fail to Show that Class Treatment Is Superior.**

The heterogeneity and unmanageability of the putative class refutes any assertion that class treatment is superior here to other available methods of adjudication. “[T]he office of a Rule 23(b)(3) certification ruling is . . . to select the metho[d] best suited to adjudication of the controversy fairly and efficiently.” *Amgen Inc. v. Conn. Ret. Plans and Trust Funds*, 133 S.Ct. 1184, 1191 (2013) (quotations omitted). Efficiency is doubtful where members of the putative class include people who acquired ACME Greens in different ways, in different states, from different parties, at different costs, and under different circumstances—necessitating extensive individualized inquiry. Moreover, there would be significant “difficulties in managing the class action,” *see* Fed. R. Civ. P. 23(b)(3)(D), based on this heterogeneity as well as the state law

considerations discussed. Plaintiffs have the burden of demonstrating superiority. However, instead of proposing other methods for adjudication that potentially could be more workable, Plaintiffs have elected to adhere to an overbroad putative class definition for one nationwide class—hindering the prospect of fair resolution of this controversy with class treatment.

**IV. CONCLUSION**

For the foregoing reasons, the Court should deny Plaintiffs' request for class certification.

## Applicant Details

First Name **Cameron**  
 Last Name **Molis**  
 Citizenship Status **U. S. Citizen**  
 Email Address [cfm2124@columbia.edu](mailto:cfm2124@columbia.edu)  
 Address

### Address

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 City  
**New York**  
 State/Territory  
**New York**  
 Zip  
**10025**  
 Country  
**United States**

Contact Phone Number **(914) 584-6318**

## Applicant Education

BA/BS From **Columbia University**  
 Date of BA/BS **May 2016**  
 JD/LLB From **Columbia University School of Law**  
<http://www.law.columbia.edu>  
 Date of JD/LLB **May 19, 2021**  
 Class Rank **School does not rank**  
 Law Review/Journal **Yes**  
 Journal(s) **Columbia Human Rights Law Review**  
 Moot Court Experience **Yes**  
 Moot Court Name(s) **UC Davis Asylum & Refugee Law National Moot Court Competition**

## Bar Admission

## Prior Judicial Experience

Judicial Internships/  
Externships      **No**  
Post-graduate Judicial  
Law Clerk      **No**

### **Specialized Work Experience**

### **Recommenders**

Talley, Eric  
etalley@law.columbia.edu  
Carter, Alexandra  
acarte1@law.columbia.edu  
(212) 854-4291  
Richman, Dan  
drichm@law.columbia.edu  
212-854-9370

**This applicant has certified that all data entered in this profile and any application documents are true and correct.**

**CAMERON MOLIS**

243 West 98<sup>th</sup> Street, Apt. 2E, New York, NY 10025  
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March 10, 2022

The Honorable Lewis J. Liman  
United States District Court for the Southern District of New York  
Daniel Patrick Moynihan United States Courthouse  
500 Pearl Street, Room 701  
New York, New York 10007-1312

Dear Judge Liman,

I hope this letter finds you well. I am a law clerk at Sullivan & Cromwell LLP and recently graduated from Columbia Law School as a James Kent Scholar. I write to apply for a clerkship in your chambers beginning Summer 2024 or any prior or subsequent term. As a New York native, the prospect of completing a clerkship at home in the Southern District of New York is extremely appealing.

I believe my writing experience as a litigation law clerk, my editing experience as Managing Editor of the *Columbia Human Rights Law Review*, and my research experience advising the Reporter to the Advisory Committee on the Federal Rules of Evidence have helped me develop the technical skills necessary to be an effective and valuable clerk. I have continued to build these skills by authoring an article on the Ninth Circuit's recent arbitration jurisprudence, published in the *University of Pennsylvania Journal of Law & Social Change*. These and other pursuits throughout my legal career would enable me to contribute clear thoughts and writing to your chambers.

Enclosed please find my resume, transcript, and writing sample. My writing sample is an excerpt from the aforementioned article. Letters of recommendation from Professors Daniel Richman (212-854-9370; drichm@law.columbia.edu), Alexandra Carter (212-854-3365; acartel@law.columbia.edu), and Eric Talley (212-854-0437; etalley@law.columbia.edu) are available through OSCAR.

Thank you for considering my application. Should you have any questions or require any additional information, please let me know.

Respectfully,



Cameron Molis

**CAMERON MOLIS**

243 West 98<sup>th</sup> Street, Apt. 2E, New York, NY 10025  
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**EDUCATION**

**Columbia Law School**, New York, NY

Juris Doctor, received May 2021

Honors: James Kent Scholar, 2020 – 2021

Harlan Fiske Stone Scholar, 2018 – 2020

Carol B. Liebman Mediation Prize

1st Place Oral Advocate, UC Davis Asylum & Refugee Law National Moot Court Competition

Publications: *Curbing Concepcion: How States Can Ease the Strain of Predispute Arbitration to Counter Corporate Abusers*, 24 U. PA. J.L. & SOC. CHANGE 411 (2021)

Activities: Managing Editor, *Columbia Human Rights Law Review*

Research Assistant, Professor Eric Talley, Professor Daniel Capra

Teaching Assistant, Professor Jane Ginsburg (Legal Methods, Fall 2020), Professor Shyam Balganesh (Property, Fall 2019)

Leadership Team, Advanced Mediation Clinic

Coach and External Team Competitor, LaLSA Asylum and Refugee Law Moot Court

**Columbia College, Columbia University**, New York, NY

Bachelor of Arts, received May 2016

Major: Classical Studies

Honors: Dean's List

Thesis: *A New Spin on an Old Story: The Odyssey's Subversion and Suppression of the Greek Mythological Tradition*

Activities: Student Council; Model United Nations; New Student Orientation Program

**EXPERIENCE**

**Sullivan & Cromwell LLP**, New York, NY

*Law Clerk* (NY Bar admission pending) September 2021 – Present

Conducted legal research and drafted memoranda in parallel civil litigation and government investigations.

Represented a pro bono client in a juvenile record sealing and expungement case.

**Professor Daniel Capra**, Reporter to the Advisory Committee on the Federal Rules of Evidence

*Full-Time Research Assistant* (summer program at Sullivan & Cromwell LLP canceled) Summer 2020

Drafted memoranda identifying circuit splits over the Federal Rules of Evidence and assisted in writing a responsive rulemaking proposal to the Advisory Committee on the Federal Rules of Evidence.

**New York City Council**, New York, NY

*Bill Drafting Division Intern* Summer 2019

Independently drafted bills and wrote legal memoranda addressing the City Council's ability to legislate on labor rights and criminal justice matters. Developed proposals to ensure the constitutionality of future city initiatives.

**Kleinberg, Kaplan, Wolff & Cohen, P.C.**, New York, NY

*Litigation and Real Estate Paralegal* March 2017 – June 2018

Performed legal research, drafted subpoenas and document requests, edited and cite-checked legal briefs.

*Corporate Paralegal* June 2016 – March 2017

Managed corporate formations and helped clients meet state and federal regulatory requirements.

**LANGUAGE SKILLS:** French (proficient), Spanish (basic)

**INTERESTS:** Indoor/outdoor rock climbing, Cooking, DSLR photography

## COLUMBIA UNIVERSITY IN THE CITY OF NEW YORK

NAME: Cameron Francis Molis  
SSN#: XXX-XX-1295  
SCHOOL: SCHOOL OF LAW

DEGREE(S) AWARDED: Bachelor of Arts  
DATE AWARDED: May 18, 2016

NON-DEGREE May 18, 2016  
Juris Doctor (Doctor of Law) May 19, 2021

MAJOR: CLASSICS  
TRACK: CLASSICAL STUDIES  
PROGRAM: LAW

PROGRAM TITLE: LAW

SUBJECT COURSE TITLE NUMBER			POINTS	GRADE	SUBJECT COURSE TITLE NUMBER			POINTS	GRADE
HARLAN FISKE STONE - FIRST YEAR ENDING MAY 19					Spring 2020				
HARLAN FISKE STONE SCHOLAR-SECOND YEAR ENDING MAY 20					Due to the COVID-19 pandemic, Mandatory Pass/Fail grading was in effect for all regular, full-term courses for the spring 2020 semester.				
JAMES KENT SCHOLAR-THIRD YEAR ENDING MAY 21									
CAROL B. LIEBMAN MEDIATION PRIZE- May 2021									
Mandatory Pro Bono, 40 Hours									
Fall 2018									
LAW	L	6101 CIVIL PROCEDURE	4.00	A-	LAW	L	6241 EVIDENCE	4.00	CR
LAW	L	6105 CONTRACTS	4.00	B+	LAW	L	6655 HUMAN RIGHTS LAW REVIEW	0.00	CR
LAW	L	6113 LEGAL METHODS	1.00	CR	LAW	L	6683 SUPERVISED RESEARCH PAPER	1.00	CR
LAW	L	6115 LEGAL PRACTICE WORKSHOP I	2.00	HP	LAW	L	6867 INDEPENDENT MOOT CT COACH	1.00	CR
LAW	L	6116 PROPERTY (FOUNDATION)	4.00	A	LAW	L	9137 S SENTENCING	2.00	CR
Spring 2019					LAW	L	9239 MEDIATION CLINIC	4.00	CR
LAW	L	6108 CRIMINAL LAW	3.00	A-	LAW	L	9239 MEDIATION CLINIC	3.00	CR
LAW	L	6118 TORTS	4.00	B+	DEAN'S HONORS- L9239 WITH A. CARTER				
LAW	L	6121 LEGAL PRACTICE WSHOP II	1.00	P	L6683 WITH BARENBERG, MARK				
LAW	L	6130 LEGAL METHODS II	1.00	CR	Fall 2020				
LAW	L	6133 CONSTITUTIONAL LAW	4.00	A	LAW	L	6231 CORPORATIONS	4.00	A-
LAW	L	6369 LAWYERING FOR CHANGE	3.00	B+	LAW	L	6238 CRIMINAL ADJUDICATION	3.00	A-
LAW	L	6862 LALS MOOT COURT	0.00	CR	LAW	L	6274 PROFESSIONAL RESPONSIBILI	3.00	A
Fall 2019					LAW	L	6655 HUMAN RIGHTS LAW REVIEW	1.00	CR
LAW	L	6169 LEGISLATION AND REGULATIO	4.00	A-	LAW	L	9262 ADVANCED MEDIATION CLINIC	4.00	A
LAW	L	6474 LAW OF THE POLITICAL PROC	3.00	B+	Spring 2021				
LAW	L	6655 HUMAN RIGHTS LAW REVIEW	0.00	CR	LAW	L	6109 CRIMINAL INVESTIGATIONS	3.00	A-
LAW	L	6822 TEACHING FELLOWS	4.00	CR	LAW	L	6293 ANTITRUST AND TRADE REGUL	3.00	A-
LAW	L	6867 INDEPENDENT MOOT CT COACH	1.00	CR	LAW	L	6425 FEDERAL COURTS	4.00	A
LAW	L	9164 SEM-LABOR RIGHTS IN GLOBL	3.00	A-	LAW	L	6655 HUMAN RIGHTS LAW REVIEW	0.00	CR
L6822 WITH BALGANESH, SHYAMKRISHNA					LAW	L	6685 SERV-UNPAID FACULTY RSRCH	2.00	A
					LAW	L	9262 ADVANCED MEDIATION CLINIC	4.00	A
					L6685 WITH TALLEY, ERIC				

This official transcript was produced on  
MAY 27, 2021.



SEAL OF COLUMBIA UNIVERSITY  
IN THE CITY OF NEW YORK

*Barry S. Kane*

Barry S. Kane  
Associate Vice President and University Registrar

TO VERIFY AUTHENTICITY OF DOCUMENT, THE BLUE STRIP BELOW CONTAINS HEAT SENSITIVE INK WHICH DISAPPEARS UPON TOUCH

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SEAL OF COLUMBIA UNIVERSITY  
IN THE CITY OF NEW YORK

**Columbia College, Engineering and Applied Science, General Studies, Graduate School of Arts and Sciences, International and Public Affairs, Library Service, Human Nutrition, Nursing, Occupational Therapy, Physical Therapy, Professional Studies, Special Studies Program, Summer Session**  
**A, B, C, D, F** (excellent, good, fair, poor, failing). NOTE: Plus and minus signs and the grades of **P** (pass) and **HP** (high pass) are used in some schools. The grade of **D** is not used in Graduate Nursing, Occupational Therapy, and Physical Therapy.

**American Language Program, Center for Psychoanalytic Training and Research, Journalism**

**P** (pass), **F** (failing). Grades of **A, B, C, D, P** (pass), **F** (failing) — used for some offerings from the American Language Program Spring 2009 and thereafter.

**Architecture**

**HP** (high pass), **P** (pass), **LP** (low pass), **F** (failing), and **A, B, C, D, F** — used June 1991 and thereafter **P** (pass), **F** (failing) — used prior to June 1991.

**Arts**

**P** (pass), **LP** (low pass), **F** (fail). **H** (honors) used prior to June 2015.

**Business**

**H** (honors), **HP** (high pass), **P1** (pass), **LP** (low pass), **P** (unweighted pass), **F** (failing); plus (+) and minus (-) used for **H**, **HP** and **P1** grades Summer 2010 and thereafter.

**College of Physicians and Surgeons**

**H** (honors), **HP** (high pass), **P** (pass), **F** (failing).

**College of Dental Medicine**

**H** (honors), **P** (pass), **F** (failing).

**Law**

**A** through **C** [plus (+) and minus (-) with **A** and **B** only], **CR** (credit - equivalent to passing), **F** (failing) is used beginning with the class which entered Fall 1994. Some offerings are graded by **HP** (high pass), **P** (pass), **LP** (low pass), **F** (failing). **W** (withdrawn) signifies that the student was permitted to drop a course, for which he or she had been officially registered, after the close of the Law School's official Change of Program (add/drop) period. It carries no connotation of quality of student performance, nor is it considered in the calculation of academic honors.  
**E** (excellent), **VG** (very good), **G** (good), **P** (pass), **U** (unsatisfactory), **CR** (credit) used from 1970 through the class which entered in Fall 1993.

Any student in the Law School's Juris Doctor program may, at any time, request that he or she be graded on the basis of Credit-Fail. In such event, the student's performance in every offering is graded in accordance with the standards outlined in the school's bulletin, but recorded on the transcript as Credit-Fail. A student electing the Credit-Fail option may revoke it at any time prior to graduation and receive or request a copy of his or her transcript with grades recorded in accordance with the policy outlined in the school bulletin. In all cases, the transcript received or requested by the student shall show, on a cumulative basis, all of the grades of the student presented in single format — i.e., all grades shall be in accordance with those set forth in the school bulletin, or all grades shall be stated as Credit or Fail.

**Public Health**

**A, B, C, D, F** - used Summer 1985 and thereafter. **H** (honors), **P** (pass), **F** (failing) — used prior to Summer 1985.

**Social Work**

**E** (excellent), **VG** (very good), **G** (good), **MP** (minimum pass), **F** (failing).

**A** through **C** is used beginning with the class which entered Fall 1997. Plus signs used with **B** and **C** only, while minus signs are used with all letter grades. The grade of **P** (pass) is given only for select classes.

**OTHER GRADES USED IN THE UNIVERSITY**

**AB** = Excused absence from final examination.

**AR** = Administrative Referral awarded temporarily if a final grade cannot be determined without additional information.

**AU** = Audit (auditing division only).

**CP** = Credit Pending. Assigned in graduate courses which regularly involve research projects extending beyond the end of the term. Until such time as a passing or failing grade is assigned, satisfactory progress is implied.

**F\*** = Course dropped unofficially.

**IN** = Work Incomplete.

**MU** = Make-Up. Student has the privilege of taking a second final examination.

**R** = For the Business School: Indicates satisfactory completion of courses taken as part of an exchange program and earns academic credit.

**R** = For Columbia College: The grade given for course taken for no academic credit, or notation given for internship.

**R** = For the Graduate School of Arts and Sciences: By prior agreement, only a portion of total course work completed. Program determines academic credit.

**R** = For the School of International and Public Affairs: The grade given for a course taken for no academic credit.

**UW** = Unofficial Withdrawal.

**UW** = For the College of Physicians and Surgeons: Indicates significant attempted coursework which the student does not have the opportunity to complete as listed due to required repetition or withdrawal.

**W** = Withdrew from course.

**YC** = Year Course. Assigned at the end of the first term of a year course. A single grade for the entire course is given upon completion of the second term. Until such time as a passing or failing grade is assigned, satisfactory progress is implied.

**OTHER INFORMATION**

NOTE: All students who cross-register into other schools of the University are graded in the **A, B, C, D, F** grading system regardless of the grading system of their own school, except in the schools of Arts (prior to Spring 1993) and in Journalism (prior to Autumn 1992), in which the grades of **P** (pass) and **F** (failing) were assigned. Notations at the end of a term provide documentation of the type of separation from the University.

% of **A** Effective fall 1996: Transcripts of Columbia College students show the percentage of grades in the **A (A+, A, A-)** range in all classes with at least 12 grades, the mark of **R** excluded. Calculations are taken at two points in time, three weeks after the last final examination of the term and three weeks after the last final of the next term. Once taken, the percentage is final even if grades change or if grades are submitted after the calculation. For additional information about the grading policy of the Faculty of Columbia College, consult the College Bulletin.

**KEY TO COURSE LISTINGS**

A course listing consists of an area, a capital letter(s) (denotes school bulletin) and the four digit course number (see below).

The **capital letter** indicates the University school, division, or affiliate offering the course:

<b>A</b>	Graduate School of Architecture, Planning, and Preservation
<b>B</b>	School of Business
<b>BC</b>	Barnard College
<b>C</b>	Columbia College
<b>D</b>	College of Dental Medicine
<b>E</b>	School of Engineering and Applied Science
<b>F</b>	School of General Studies
<b>G</b>	Graduate School of Arts and Sciences
<b>H</b>	Reid Hall (Paris)
<b>J</b>	Graduate School of Journalism
<b>K</b>	School of Library Services/Continuing Education (effective Fall 2002)
<b>L</b>	School of Law
<b>M</b>	College of Physicians and Surgeons, Institute of Human Nutrition, Program in Occupational Therapy, Program in Physical Therapy, Psychoanalytic Training and Research
<b>N</b>	School of Nursing

<b>O</b>	Other Universities or Affiliates/Auditing
<b>P</b>	School of Public Health
<b>Q</b>	Computer Technology/Applications
<b>R</b>	School of the Arts
<b>S</b>	Summer Session
<b>T</b>	School of Social Work
<b>TA-TZ</b>	Teachers College
<b>U</b>	School of International and Public Affairs
<b>V</b>	Interschool Course
<b>W</b>	Interfaculty Course
<b>Y</b>	Teachers College
<b>Z</b>	American Language Program

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The **first digit** of the course number indicates the level of the course, as follows:

<b>0</b>	Course that cannot be credited toward any degree
<b>1</b>	Undergraduate course
<b>3</b>	Undergraduate course, advanced
<b>4</b>	Graduate course open to qualified undergraduates
<b>5</b>	Graduate course open to qualified undergraduates
<b>6</b>	Graduate course
<b>7</b>	Graduate course
<b>8</b>	Graduate course, advanced
<b>9</b>	Graduate research course or seminar

**Note: Level Designations Prior to 1961:**

**1-99** Undergraduate courses  
**100-299** Lower division graduate courses  
**300-999** Upper division graduate courses

The term designations are as follows:

X=Autumn Term, Y=Spring Term, S=Summer Term

Notations at the end of a term provide documentation of the type of separation from the University.

THE ABOVE INFORMATION REFLECTS GRADING SYSTEMS IN USE SINCE SPRING 1982. THE CUMULATIVE INDEX, IF SHOWN, DOES NOT REFLECT COURSES TAKEN BEFORE SPRING OF 1982. ALL TRANSCRIPTS ISSUED FROM THIS OFFICE ARE OFFICIAL DOCUMENTS. TRANSCRIPTS ARE PRINTED ON TAMPER-PROOF PAPER, ELIMINATING THE NEED FOR SIGNATURES AND STAMPS ON THE BACK OF ENVELOPES. FOR CERTIFICATION PURPOSES, A REPRODUCED COPY OF THIS RECORD SHALL NOT BE VALID. THE HEAT-SENSITIVE STRIP, LOCATED ON THE BOTTOM EDGE OF THE FACE OF THE TRANSCRIPT, WILL CHANGE FROM BLUE TO CLEAR WHEN HEAT OR PRESSURE IS APPLIED. A BLUE SIGNATURE ALSO ACCOMPANIES THE UNIVERSITY SEAL ON THE FACE OF THE TRANSCRIPT.

## COLUMBIA UNIVERSITY IN THE CITY OF NEW YORK

NAME: Cameron Francis Molis  
 SSN#: XXX-XX-1295  
 SCHOOL: COLUMBIA COLLEGE

DEGREE(S) AWARDED: Bachelor of Arts  
 DATE AWARDED: May 18, 2016

NON-DEGREE May 18, 2016  
 Juris Doctor (Doctor of Law) May 19, 2021

MAJOR: CLASSICS  
 TRACK: CLASSICAL STUDIES  
 PROGRAM: LAW

PROGRAM TITLE: CLASSICS

SUBJECT COURSE TITLE NUMBER	POINTS	GRADE	SUBJECT COURSE TITLE NUMBER	POINTS	GRADE
Fall 2013			Spring 2015		
ECON W 3213 INTERMEDIATE MACROECONOM	3.00	P	COCI C 1102 CONTEMP WESTRN CIVILIZATI	4.00	A
FREN BC 3021 MAJOR FRENCH TEXTS I	3.00	A-	HIST W 1004 ANCIENT HISTORY OF EGYPT	3.00	A-
HUMA C 1001 EURPN LIT-PHILOS MASTERPI	4.00	A-	HIST W 1020 ROMANS/EMPIRE 754 BC TO	3.00	A-
HUMA W 1121 MASTERPIECES OF WESTERN A	3.00	A	LATN V 1202 INTERMEDIATE LATIN II	4.00	A-
PHIL C 1010 METHDS & PBLMS-PHILOSPHIC	3.00	B+	PHED C 1002 PHYSICAL ED: STRENGTH TRA	1.00	P
			POLS W 3704 DATA ANALYSIS & STATS-POL	3.00	A-
HONORS: DEAN'S LIST			HONORS: DEAN'S LIST		
Spring 2014			Fall 2015		
CLCV W 4190 PHILOSOPHY IN CLASSICAL	3.00	A	CLCV W 3244 GLOBAL HISTORIES OF THE	3.00	A-
COMS W 1004 INTRO-COMPUT SCI/PROG JAV	3.00	B	FREN BC 3019 ADVANCED PHONETICS	3.00	A
HUMA C 1002 EURPN LIT-PHILOS MASTERPIE	4.00	A-	GREK V 3309 GREEK LIT I: IMPERIAL PRO	3.00	A
LATN V 1121 INTENSIVE ELEMENTARY COUR	4.00	B-	WRIT W 1201 BEGINNING POETRY WORKSHOP	3.00	A
THTR V 2007 SCENE LAB	3.00	A-			
HONORS: DEAN'S LIST			HONORS: DEAN'S LIST		
Summer 2014			Spring 2016		
ANTH S 4109 POLITICAL ECON OF LATIN	3.00	A-	ENGL W 3336 SHAKESPEARE II	3.00	P
HUMA S 1123 MASTERPIECES OF WESTERN	3.00	A+	FREN BC 3016 ADVANCED ORAL FRENCH	3.00	A-
Fall 2014			GREK V 3998 SUPERVISED RSCH IN GREEK	3.00	A
CLLT V 3132 CLASSICAL MYTH	3.00	A-	PHED C 1002 PHYSICAL ED: CARDIO FITNE	1.00	P
COCI C 1101 CONTEMP WESTERN CIVILIZAT	4.00	A	RELI V 2205 HINDUISM	4.00	A-
HIST W 3535 HIST OF THE CITY OF NEW	3.00	A+	SPAN W 1101 ELEMENTARY SPANISH I	4.00	A
LATN V 1201 INTERMEDIATE LATIN I	4.00	B+	WRIT W 2201 INTERMEDIATE POETRY WORK	3.00	A
LATN V 3996 THE MAJOR SEMINAR	3.00	A-			
HONORS: DEAN'S LIST			HONORS: DEAN'S LIST		
HONORS: DEAN'S LIST			REMARKS		

Cumulative GPA: 3.735

34.00 Credits Transferred from Georgetown University

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SEAL OF COLUMBIA UNIVERSITY  
 IN THE CITY OF NEW YORK

*Barry S. Kane*

Barry S. Kane  
 Associate Vice President and University Registrar

TO VERIFY AUTHENTICITY OF DOCUMENT, THE BLUE STRIP BELOW CONTAINS HEAT SENSITIVE INK WHICH DISAPPEARS UPON TOUCH